

SUMMA AGAINST USURY



Quis ut Deus?

LIBERTARIANISM IS SATANISM

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The nature of the sin called usury has its proper place and origin in a mutuum contract.
– Benedict XIV

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Home

This website is dedicated to the study and research of the Catholic Church's traditional teaching on usury. It is an on-going project to provide the sources of the Catholic Church's doctrine. As part of that project, I offer my own articulation and defense of that doctrine and so I offer my own commentary on sources, articulation of the doctrine and addressing specific modern positions on it.

The various documents are accessible from the menu bar and include links to the original sources.

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A Usury Catechism

This work is meant as a summary of the Catholic Teaching on usury based upon Papal and Conciliar teaching, and the works Sts. Ambrose and Thomas Aquinas. This is a catechetical work and so is meant for instruction rather than dialectic. I have attempted to include questions that are most relevant and which have reasonably clear answers. Not all sources have equal authority, nor are all significant authorities included in each questions. If you have other questions let me know. All errors are my own.

Disclaimer: I am amateur Latinist, but I have translated a few short passages with no English translations. If they include errors, please let me know. Further, I have taken liberty with texts that have English translations to correct obvious mistranslations (e.g. “usura” does not mean “interest-taking” nor does “aliquid moderatum” mean “moderate rate of interest.”)

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1. What is usury?

Usury is profit from a mutuum contract.

“And do you think you are acting piously because you receive as it were a loan [mutuum] from the merchant? Thereby he commits fraud in the price of his goods from which he pays usury to you.”

ST. AMBROSE OF MILAN (C. 339 – 397), [DE TOBIA, #49](#)

Commentary: When referring to usury St. Ambrose always speaks of the “mutuum.” As a former Roman government official he would have been versed in Roman Law and the specific nature of the mutuum.

“Usury is profit owed or exacted from a mutuum pact.” [Usura est lucrum, mutuo pacto debitum, vel exactum.]

POPE INNOCENT IV (C. 1195-1254), [APPARATUS IN QUINQUE LIBROS DECRETALIUM, LIB V, TIT. XIX, CAP. I](#)

“We must now consider the sin of usury, which is committed in loans [in mutuis].”

ST. THOMAS AQUINAS (1225-1274), [SUMMA THEOLOGICA II-II Q.78, INTRO](#)

“All profit from a mutuum precisely by reason of lending... are usurious.” [Omne lucrum ex mutuo, praecise ratione mutui...usuraium.]

POPE BENEDICT XIV (1675-1758), [DE SYNODO, LIB X, CAP IV](#)

“Therefore [the lender] contends some gain is owed him beyond the principal by reason of the loan [ratione mutui], but any gain which exceeds the amount he gave is illicit and usurious.”

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT 3.I](#)

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2. Is usury only in a mutuum?

Yes. Usury only arises from a mutuum contract.

See Citations in #1.

“A contract of this kind cannot be considered usurious from its form, which is a sale and not a mutuum.”

[Huiusmodi contractus, non potest censeri usurarius ex forma, quia venditio est, et non mutuum.]

POPE INNOCENT IV (C. 1195-1254), [APPARATUS IN QUINQUE LIBROS DECRETALIUM, LIB V, TIT. XIX, CAP. V](#)

Commentary: The contract discussed cannot be considered usurious, because it lacks the proper form, namely it is not a mutuum contract. This implies that in order for a contract to be usurious, it must have the form of a mutuum.

“And so if one gives money sealed in a purse to someone to post it as security and then receives recompense, this not usury, since it involves a renting or hiring out [locatio et conductio], not a contract for a loan [mutui].” –

ST. THOMAS AQUINAS (1225-1274), [DE MALO, Q. 14, A. 4, AD. 15](#)

Commentary: Aquinas asserts that the aforementioned sealed purse is not usury precisely because it is “not a contract for a loan [mutui]” implying that usury arises specifically from the mutuum.

“The nature of the sin called usury has its proper place and origin in a loan contract [contractu mutui].”

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT 3.1](#)

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3. What is a mutuum contract?

A mutuum is a personally secured or guaranteed loan. This means that the principal is guaranteed by the borrower himself.

"He who lends money transfers the ownership of the money to the borrower. Hence the borrower holds the money at his own risk and is bound to pay it all back..."

ST. THOMAS AQUINAS (1225-1274), [ST II-II, Q. 78, A. 2, AD. 5](#)

Commentary: Aquinas asserts that the borrower is responsible for the good at his own risk and he is bound to pay it all back. Even if the good is destroyed, the borrower is still responsible for the return."

"But if [borrowers] were altogether insolvent, there was the same reason for remitting the debt from love for them, as there was for renewing the loan on account of their need."

ST. THOMAS AQUINAS (1225-1274), [ST I-II, Q. 105, A. 2, AD. 4](#)

Commentary: Aquinas is here discussing the sufficiency of the Old Law and specifically the Jubilee in relation to mutuum loans. Notably, even if the borrower is insolvent, he is still responsible for the principal. It is from the love of the lender that the debt is to be remitted and not the insolvency of the borrower.

"But the [census] buyers, on the other hand, even though the said goods, houses, lands, fields, possessions, and inheritances might by the passage of time be reduced to utter destruction and desolation, would not be empowered to recover even in respect of the price paid."

POPE CALLISTUS III (1378-1458), [REGIMINI UNIVERSALIS](#)

Commentary: Callistus III rules the census as described here as not usurious. The received rents arise from the property and the census buyer receives only a claim against the property. If the property is destroyed, he cannot pursue the census seller. Ergo, a contract secured by property is not usurious.

"We by this our constitution decree, that rent or an annuity, can by no means be created, or constituted, unless in an immoveable thing, or a thing that may be considered as immoveable, of its own nature fruitful, and that may be nominally designated by certain limits...."

[W]e wish that all rents to be hereafter created, do perish in proportion, not only when the thing is perished in the whole or in part, or rendered in whole or in part fruitless...

[W]e judge that contracts, to be celebrated hereafter, under any other form, are usurious."

POPE ST. PIUS V (1504-1572), [CUM ONUS](#)

Commentary: St. Pius V declares that the census contract which are not constituted or secured by property (i.e. some immoveable thing) are considered usurious. Moreover, the rents diminish according to the property perishes emphasizing the principal and profit are secured by the property. Contract not fully secured by some property are usurious.

"We do in this our perpetual decree, reprobate and condemn all contracts, pacts and conventions whatever, to be celebrated in future, whereby it will be provided on the part

of the persons putting into company money, animals, or any other things whatever, that if, even by mere accident, any injury, loss, or damage, follow, the very principal, or capital be always safe and restored in full by the managing partner ; or that he guarantee to pay yearly, or monthly during the existence of the company a certain sum or quantity. We decree, that such contracts, pacts, or conventions are to be henceforward deemed illicit and usurious...

"... no action real or personal, or any other title appertains to any person either for recovering in full the capital or principal, if it should by any casualty perish, or be lost ; nor to any specific sum or quantity promised yearly or monthly under the appellation of profit....

"If any man do in future rashly presume to contract under the foregoing pacts or conditions ; or under the veil of such conventions, pacts, or contracts formed in the name of a company heretofore existing, do presume to take proceedings for the recovery of the said capital or principal, or the value or price thereof, after it be casually lost or perished, in the whole or in part, or of an annual or monthly specified sum or quantity, We decree that they, and every one of them do, ipso facto, incur the penalties decreed and promulgated by the Sacred Canons and General Councils against notorious usurers..."

POPE SIXTUS V (1521-1590), [DETESTABILIS AVARITA](#)

Commentary: Pope Sixtus V declares the mentioned contracts where the managing partner personally guarantees principal and profit are usurious. He declares again that no legal action can be taken against the managing partner if the property is destroyed. If the partners proceed against the managing partner for recovery of the property, he is to be treated as a usurer.

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4. What are example of personally secured contract?

Credit cards, student loans, car loans, full recourse mortgages, etc. Any debt where the creditor can pursue the debtor for the return of he debt.

"An unsecured loan is a loan that doesn't require any type of collateral. Instead of relying on a borrower's assets as security, lenders approve unsecured loans based on a borrower's creditworthiness. Examples of unsecured loans include personal loans, student loans, and credit cards...

If a borrower defaults on a secured loan, the lender can repossess the collateral to recoup the losses. In contrast, if a borrower defaults on an unsecured loan, the lender cannot claim any property. But the lender can take other actions, such as commissioning a collection agency to collect the debt or taking the borrower to court. If the court rules in the lender's favor, the borrower's wages may be garnished...

Unsecured loans include personal loans, student loans, and most credit cards—all of which can be revolving or term loans."

INVESTOPEDIA, [UNSECURED LOAN](#)

"A recourse loan allows a lender to pursue additional assets of a borrower who defaults if the balance of the debt surpasses the value of the collateral. A non-recourse loan permits

the lender to seize only the collateral specified in the loan agreement, even if its value does not cover the entire debt.

Either type of loan may be collateralized. That is, the loan agreement will specify that the lender can seize and sell certain property or properties of the borrower to recoup its money in cases of default.

However, a recourse debt gives the lender the recourse to pursue additional assets of the borrower beyond the value of the collateral if it is necessary to recoup its losses on the loan."

INVESTOPEDIA, [RECOURSE VS. NON-RECOURSE LOAN](#)

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5. What is considered profit?

In this definition profit means anything in excess of the principal.

"...whatever is added to the capital [principal] is usury." [...quodcumque sorti accedit usura est]

ST. AMBROSE (C. 339 – 397), [DE TOBIA #49](#)

"In like manner he commits an injustice who lends wine or wheat, and asks for double payment, viz. one, the return of the thing in equal measure, the other, the price of the use, which is called usury."

ST. THOMAS AQUINAS (1225-1274), [ST II-II, Q.78, A. 1, CO.](#)

*"Therefore he contends **some gain is owed him beyond he principal** by reason of the loan [ratione mutui], but any gain which exceeds the amount he gave is illicit and usurious."*

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT 3.I](#)

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6. Is usury intrinsically evil?

Yes, usury is intrinsically evil. One can never licitly contract a mutuum for profit.

"But killing an innocent person brings in a species of evil, and this cannot be done righteously, just as lending at usury [dare mutuum ad usuram]"

ST. THOMAS AQUINAS (1225-1274), [DE MALO, Q.14, A. 4, AD 11.](#)

"If indeed someone has fallen into the error of presuming to affirm pertinaciously that the practice of usury is not sinful, we decree that he is to be punished as a heretic."

COUNCIL OF VIENNE (1311-1312), [#29](#)

"The law governing loans consists necessarily in the equality of what is given and returned; once the equality has been established, whoever demands more than that violates the terms of the loan."

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT 3.III](#)

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7. Is a moderate profit licit?

No, no profit from a mutuum is licit.

"One cannot condone the sin of usury by arguing that the gain is not great or excessive..."

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT. 3.II](#)

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8. Is profit from a merchant, businessman or wealthy person licit?

No, no profit from a mutuum is licit.

"[Usurers] lay snares for recent heirs, they hunt out rich young men through their friends, they attach themselves, pretending friendships with their father or grandfather; they wish to learn their private needs... [Usurers] stretch nets, and as soon as he has entered the space surrounded by its enclosing folds, they force [a rich young man] into the toils of obligations, the snares of usury."

ST. AMBROSE (c. 339 – 397), [DE TOBIAS 6.23](#)

"...neither can [usury] be condoned by arguing that the borrower is rich..."

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT. 3.III](#)

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9. Is profit from a loan used for productive purposes licit?

No, no profit from a mutuum is licit.

"However, whatever arises from the money loaned beyond the measure of the loan, due to the use of what I have loaned to him, this is due to the industry of him who sagaciously made use of the money. However, I ought not try to sell him his own industry, just as neither ought I to have less because of his own foolishness."

ST. THOMAS AQUINAS (1225-1274), [SCRIPTUM SUPER SENTENTIIS LIB III. DIST 36. A. 6. AD. 4](#)

"...nor [can usury be excused] even by arguing that the money borrowed is not left idle, but is spent usefully, either to increase one's fortune, to purchase new estates, or to engage in business transactions."

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT 3.II](#)

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10. Is profit on the basis of time preference, time value of money, or opportunity cost licit?

No, time preference nor time value of money nor opportunity cost excuses usury.

Commentary: [Time preference](#) and [time value of money](#) hold that money today is more valuable than money in the future. [Opportunity cost](#) is a related concept that there is some cost associated in not doing something else. If I choose to lend, I forgo the profits I could have made had I invested the money.

"But the lender cannot enter an agreement for compensation, through the fact that he makes no profit out of his money: because he must not sell that which he has not yet and may be prevented in many ways from having."

ST. THOMAS AQUINAS (1225-1274), [ST II-II. Q. 78. A. 2. AD. 1](#)

“There is indeed one kind of compensation because something is not present, namely, that one did not acquire what one could have acquired, and one is not obligated to compensate for this.”

ST. THOMAS AQUINAS (1225-1274), [DE MALO, Q. 14, A. 4, OBJ. 14](#)

Commentary: *In the above two passages, Aquinas clearly rejects opportunity cost as an excuse for usury. The profit a lender could have made is not something he has a title to because it doesn't exist and will never exist.*

“[Condemned proposition:] Since ready cash is more valuable than that to be paid, and since there is no one who does not consider ready cash of greater worth than future cash, a creditor can demand something beyond the principal from the borrower, and for this reason be excused from usury.”

POPE INNOCENT XI (1611-1689), [VARIOUS ERRORS ON MORAL SUBJECTS, #41](#)

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11. Is there any reason a lender may receive more than the principal in a mutuum?

No, not from the mutuum itself. However, there may be titles or claims apart from or extrinsic to the mutuum.

“A lender may without sin enter an agreement with the borrower for compensation for the loss he incurs of something he ought to have, for this is not to sell the use of money but to avoid a loss.”

ST. THOMAS AQUINAS (1225-1274), [ST II-II, Q. 78, A. 2, AD. 1](#)

Commentary: *Aquinas remarks that an agreement may be entered. This agreement is extrinsic to but conditionally related to the mutuum. That is the lender makes the compensation of loss a condition of the mutuum, but the compensation remains a separate agreement. Aquinas specifically notes that this is related to “something [the lender] ought to have,” so there is some claim or title apart from the mutuum present here.*

“A lender by reason of money lent can in two ways incur the loss of something already possessed. The lender incurs loss in one way because the borrower does not return the money lent at the specified date, and then the borrower is obliged to pay compensation.”

ST. THOMAS AQUINAS (1225-1274), [DE MALO, Q. 13, A. 4, AD. 13](#)

Commentary: *Aquinas makes a more narrow claim than the prior statement. Here he only specifies a loss due to delay. However, again he specifies that this is on the basis of “something already possessed,” that is some specific claim of the lender.*

“We do not deny that at times together with the loan contract certain other titles—which are not at all intrinsic to the contract—may run parallel with it. From these other titles, entirely just and legitimate reasons arise to demand something over and above the amount due on the contract.”

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT, 3.III](#)

Commentary: *Pope Benedict here makes a conservative statement. He does “not deny” these titles. So, he doesn't affirm they exist; he simply refrains from affirming that they don't exist. There is no clear evidence that the Magisterium has approved of specific extrinsic titles on a mutuum.*

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12. Are there other contracts where profits are licit?

Yes. Other contracts, such as leases (locatio), partnerships (societas), annuities or rents (census/redditus), have licit profits.

"We command that you have the dowry assigned to [the husband] under what security he can furnish, or at any rate commit it to some merchant, so that from honest gain [the husband] can sustain the burdens of matrimony."

[...mandamus, quatenus dotem assignari faciatis eidem sub ea quam potest cautione praestare, vel saltem alicui mercatori committi, ut de parte honesti lucri dictus vir onera possit matrimonii sustentare...]

POPE INNOCENT III (1161-1216), LETTER TO ARCHBISHOP OF GENOA, [DECRETALS LIB IV, TIT 20, CAP VII](#)

"A contract of this kind [i.e. the census or redditus] cannot be considered usurious from its form, which is a sale and not a mutuum."

[Huiusmodi contractus, non potest censeri usurarius ex forma, quia venditio est, et non mutuum.]

POPE INNOCENT IV (1195-1243), [APPARATUS IN QUINQUE LIBROS DECRETALIUM, LIB V, TIT. XIX, CAP. V](#)

"On the other hand he that entrusts his money to a merchant or craftsman so as to form a kind of society [societatis], does not transfer the ownership of his money to them, for it remains his, so that at his risk the merchant speculates with it, or the craftsman uses it for his craft, and consequently he may lawfully demand as something belonging to him, part of the profits derived from his money."

ST. THOMAS AQUINAS (1225-1274), [ST II-II, Q.78, A.2, AD. 5](#)

"But if persons grant their money to others for another use in which the money is not consumed, their will be the same consideration as regarding the things that are not consumed in their very use, things that are licitly rented and hired out [locantur et conducuntur]. And so if one gives money sealed in a purse to someone to post it as security and then receives recompense, this not usury, since it involves a renting or hiring out [locatio et conductio], not a contract for a loan [mutui]."

ST. THOMAS AQUINAS (1225-1274), [DE MALO, Q. 14, A. 4, AD. 15](#)

"We, therefore, ... in order to remove every doubt springing from these hesitations, by our Apostolic authority, do declare by these present letters that the aforesaid contract [i.e. census or redditus] are licit and in agreement with law, and that the said sellers, yielding all opposition, are effectively bound to the payment of the rents and revenues in conformity with the terms of the said contracts."

POPE CALLISTUS III (1378-1458), [REGIMINI UNIVERSALIS](#)

"But rather let all people know that Fellowships [societas] of this nature, when one man will hereafter contribute money, animals, or other things or goods, and another yields his labor or industry, are to be formed or entered into honestly, sincerely and with good faith, as it should be, with fair and just conditions, according to the provisions of the

law.... Moreover, let the contractors cast up the fruits, costs and losses, and let them share and divide them fairly and justly.”

POPE SIXTUS V (1521-1590), [DETESTABILIS AVARITA](#)

“Nor is it denied that it is very often possible for someone, by means of contracts differing entirely from loans [mutui], to spend and invest money legitimately either to provide oneself with an annual income or to engage in legitimate trade and business. From these types of contracts honest gain may be made.”

POPE BENEDICT XIV (1675-1758), [VIX PERVENIT 3.III](#)

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13. Did the Fifth Lateran Council propose a definition of usury?

No, the Fifth Lateran Council did not propose a definition of usury.

“Indeed, we have learnt that among some of our dear sons who were masters in theology and doctors of civil and canon law, there has recently broken out again a particular controversy, not without scandal and disquiet for ordinary people, with regard to the relief of the poor by means of loans made to them by public authorities. They are popularly called [montes pietatis] and have been set up in many cities of Italy by the magistrates of the cities and by other Christians, to assist by this kind of loan the lack of resources among the poor lest they be swallowed up by the greed of usurers...

Some of these masters and doctors say that the [montes] are unlawful. After a fixed period of time has passed, they say, those attached to these [montes] demand from the poor to whom they make a loan so much per pound in addition to the capital sum. For this reason they cannot avoid the crime of usury or injustice, that is to say a clearly defined evil, since our Lord, according to Luke the evangelist, has bound us by a clear command that we ought not to expect any addition to the capital sum when we grant a loan. For, that is the real meaning of usury: **when, from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense or any risk.** The same masters and doctors add that in these credit organisations neither commutative nor distributive justice is observed, even though contracts of this kind, if they are to be duly approved, ought not to go beyond the bounds of justice. They endeavour to prove this on the grounds that the expenses of the maintenance of these [montes], which ought to be paid by many persons (as they say), are extracted only from the poor to whom a loan is made; and at the same time certain other persons are given more than their necessary and moderate expenses (as they seem to imply), not without an appearance of evil and an encouragement to wrongdoing.”

FIFTH LATERAN COUNCIL (1512-1517), [SESSION 10](#)

Commentary: The Council notes there is dissension between the theologians regarding whether the Montes Pietatis are usurious. The frequently cited definition appears in the section articulating the position of those theologians opposed to the Montes Pietatis. The Council ultimately rejects this opinion and declares that the Montes Pietatis are not usurious. There is no reason to suppose this definition is proposed by the Council.

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14. Did the Fifth Lateran Council teach that usury is licit?

No, the Church has never taught usury is licit.

“With the approval of the holy Council, we declare and define that the aforesaid “Mountains of piety” established by the civil authorities and thus far approved and confirmed by the authority of the Apostolic See, in which something moderate [aliquid moderatum] is received exclusively for the expenses of the officials and for other things pertaining to their keeping, as is set forth, for an indemnity of these as far as this matter is concerned, beyond the capital without a profit for these same Mountains, neither offer any species of evil, nor furnish an incentive to sin, nor in any way are condemned, nay rather that such a loan is worthwhile and is to be praised and approved, and least of all to be considered usury. . . . Moreover, we declare that all religious and ecclesiastics as well as secular persons, who henceforth shall dare to preach or dispute in word or in writing against the form of the present declaration and sanction, incur the penalty of excommunication of a sentence [automatically] imposed [latae sententiae], a privilege of any nature whatsoever notwithstanding.”

FIFTH LATERAN COUNCIL (1512-1517), [SESSION 10](#)

Commentary: The Fifth Lateran Council addressed controversies around the Montes Pietatis, which were charitable pawnshops. The Council permits “something moderate” (aliquid moderatum) be received “without a profit” and only to cover expenses. Historically, the loans granted by the Montes were full secured by the pawn, such that the lender could not pursue the borrower for a return in case the pawn didn’t cover the principal. Also, if the pawn was sold, any excess was returned to the borrower.* This means that the loans were not strictly mutuum loans. This shows Lateran V is consistent with all other teaching on the nature of usury and the mutuum.

*“First, when the borrower could not repay the loan the property securing the loan was sold, and any surplus was returned to the debtor, not the mons, and it appears to be the case that the mons could not pursue what modern law would call a deficiency judgement against the debtor.” ([Brian McCall, The Church and Usurers](#), 77-78)

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15. Did the responses of the Holy Office in the 1830’s teach usury is licit?

No, the Church has never taught usury is licit.

“The Bishop of Rheims in France explains that. . . , the confessors of his diocese do not hold the same opinion concerning the profit received from money given as a loan to business men, in order that they may be enriched thereby. There is bitter dispute over the meaning of the Encyclical Letter, “Vix pervenit”. On both sides arguments are produced to defend the opinion each one has embraced, either favorable to such profit or against it. Thence come quarrels, dissensions, denial of the sacraments to many business men engaging in that method of making money, and countless damage to souls. To meet this harm to souls, some confessors think they can hold a middle course between both opinions. If anyone consults them about gain of this sort, they try to dissuade him from it. If the penitent perseveres in his plan of giving money as a loan to business men, and objects that an opinion favorable to such a loan has many patrons, and moreover, has not been condemned by the Holy See, although more than once consulted about it, then these confessors demand that the penitent promise to conform in filial obedience to the judgment of the Holy Pontiff whatever it may be, if he should intervene; and having obtained this promise, they do not deny them absolution, although they believe an opinion contrary to such a loan is more probable. If a penitent does not confess the gain from money given as a loan, and appears to be in good faith, these confessors, even if they know from other sources that gain of this sort has been taken by him and is even now being taken they absolve him, making no interrogation about the matter, because they

fear that the penitent, being advised to make restitution or to refrain from such profit, will refuse.

Therefore the said Bishop of Rheims inquires:

- 1. Whether he can approve the method of acting on the part of these latter confessors.*
- 2. Whether he could encourage other more rigid confessors who come to consult him to follow the plan of action of those others until the Holy See brings out an express opinion on this question.*

Pius VIII responded:

To 1: They are not to be disturbed. To II: Provided for in the first."

[RESPONSE OF POPE PIUS VIII, AUGUST 18, 1830](#)

Commentary: Several responses similar to the above were given regarding specifically the administration of the Sacrament of Penance to supposed usurers. The response is consistently "They are not to be disturbed" regarding the confessors. The responses are pastoral in nature and no doctrinal statement is implied in the responses. Some responses include a provision that the confessor or penitent be willing to submit to the judgment of the Holy See at some later date.

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Notes on Sources

St. Ambrose, *De Tobia*

This is one of the most extensive treatise on usury by a Church Father. St. Ambrose was also in a unique position, because he was educated in Roman jurisprudence and worked in the Roman government before becoming a bishop. This gave him a unique insight into the nature of usury from the perspective of Roman Law and the Holy Scriptures.* He appears to be the first authority in the Church to specifically link the Scriptural condemnation of usury and the Roman Law concept of usury specifically tied to the mutuum contract.

* Lois Zucker, [S. Ambrosii De Tobia, 19](#)

Pope Innocent IV, *Apparatus*

Innocent was a master canonist in his time. The Apparatus represents his commentary on the Code of Canon Law. It doesn't necessarily represent a Magisterial statement and can be understood as his commentary as a private canonist, but it is notable nonetheless.

Pope Callistus III, *Regimini Universalis*

These are excerpts from Callistus' Apostolic Constitution. He is addressing a controversy between a buyer and seller of a census. The census grants a claim to the buyer over some fruitful property for some rents in return for a lump sum payment to

the seller. The seller in this case claimed that the contract was usurious and he was not obliged to pay the rents. Callistus rejects this claim.

This Constitution affirms a prior decision from Pope Martin V concerning the census. This has a high level of authority as Callistus invokes his “Apostolic Authority” (auctoritate Apostolica) on a matter of faith and moral regarding a question from a German bishop.

Pope Saint Pius V, *Cum Onus*

This decree comes from a translation by Fr. Jeremiah O’Callaghan in his work *Usury, Funds, and Banks*. It ostensibly deals with what was known as the *census personalis*. In such a contract, the census is based on the future labors of the seller or all of goods considered generally. St. Pius rejects this and insists that the census be grounded in some real specific property.

St. Pius’ bull is consistent with Callistus and extends this. He references his “Apostolic servitude” and declares the problematic contracts as usurious. There was some controversy over the the bull, whether it was a matter of positive or natural law. There are clearly some aspects that are positive law. However, there are unqualified aspects as well and these are where he is consistent with Callistus.

Pope Sixtus V, *Detestabilis Avaritia*

Pope Sixtus deals with the controversy around the so called “triple contract” or “German contract” or “5% contract.” It was called a triple contract because it was analyzed as the combination of three different contract, namely an insurance contract on the principal, a second contract exchange variable profits for fixed, and finally a partnership. It was argued that each individually was licit, so the combination was licit.

Pope Sixtus condemns the contracts for reason mentioned above “by the plenitude of Apostolic power” [Apostolicae potestatis plenitudine]*. Hence, Sixtus invokes a high level of authority and his remarks are consistent with the prior bulls of Callistus and St. Pius.

* Cherubini, Laerzio. *Magnum bullarium romanum*, [page 69 \(of pdf\)](#)

Pope Benedict XIV, *De Synodo*

This is a document that Benedict began writing while he was Archbishop of Bologna. It is a wide ranging work that he intended to use as part of a Synod in his diocese. The section on usury includes the traditional teaching, a refutation of the Protestant positions and more. It was not finally published until 1748, several years after he was elected Pope.

This isn’t necessarily a Magisterial document, but it does provide something of the mind of the Pope on usury. Perhaps more importantly, it includes a passage, after a lengthy refutation of erroneous positions, of his intention that *Vix Pervenit* definitively end the disagreements over usury and protect the purity of Catholic doctrine.*

* Benedicti Papæ XIV. *De Synodo dioecesana libri tredecim*, [353-354](#)

Pope Benedict XIV, *Vix Pervenit*

Vix Pervenit is the last significant doctrinal statement on usury. It is the clearest expression of the perennial usury doctrine as the encyclical itself acknowledges. It was originally addressed only to the Italian Bishops, but the Holy Offices extended to the whole Church in the 19th century.

It has been argued that because Vix Pervenit was addressed to the Italian Bishops, it cannot be infallible.* As John Joy shows, this is insufficient reason for failing to obtain the infallibility.** Moreover, Fr. McLaughlin argues that Benedict saw himself as speaking as the Supreme Pontiff to definitively teach a moral doctrine and so reaches the level of infallibility.*** In any case, there is good reason to believe that Vix Pervenit reiterates what has always been taught as Vix Pervenit itself claims.

* Fr. Aruther Vermeersch, S.J., [“Usury”, *Catholic Encyclopedia*](#)

** John Joy, [“Disputed Questions on Papal Infallibility”, *Nova et Vetera*, 60-61.](#)

*** Fr. McLaughlin, [“Interest and Usury”, *Ecclesiastical Review*, 246](#)

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“Are we not ashamed to pay usury? Not contented within the limits of our own means, we do by giving pledges and entering into contracts, fabricate the yoke of our slavery.”
– Plutarch

We exhort you not to listen to those who say that today the issue of usury is present in name only, since gain is almost always obtained from money given to another. How false is this opinion and how far removed from the truth! We can easily understand this if we consider that the nature of one contract differs from the nature of another. – Vix Pervenit

Understanding usury requires an understanding of how the nature of some contracts differs, fundamentally and categorically, from the nature of others. Usury is not a matter of the same kind of contract differing only by ‘excessive interest’. Usurious contracts constitute a kind of contract which is intrinsically immoral by its very nature. This FAQ is intended to help people understand what usury is – and is not – and answer many of the questions which naturally arise.

[Note: this FAQ is also available in the form of a public domain [ebook](#). It is also available as a [hard copy](#) book.]

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it relatively common before the modern era for people to be sold into slavery to pay off a debt?

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1) What is Usury?

Usury is [lending money for profitable interest](#). The term "usury" often specifically refers to the interest itself – interest charged on a *mutuum* (personally guaranteed by the borrower) loan.

2) What is "lending"?

Lending is an agreement between a lender and a borrower, wherein the lender gives property to the borrower and the borrower pledges to "return it" later. The phrase "return it" might mean returning the actual property which was lent, or it might mean returning some different property – typically the same kind and in the same amount. It is the latter sort of lending which is the context for usury: borrowing money or sugar, not borrowing a lawn mower or hedge trimmer.

In this kind of lending, the loan is a contract wherein the borrower is personally obligated, by his own agreement, to return the principal *amount* of the loan to the lender at some future time: not a specific *object* lent, but a specific *amount* lent. This is traditionally called a "mutuum".

St. Thomas Aquinas defines a loan as a contract in which "the borrower holds the money at his own risk and is bound to pay it all back": that is, the lender has recourse to the *borrower himself* to recover the loaned amount.

Today this kind of loan is called a "full recourse loan", as contrasted to a "non recourse loan"¹. So usury is charging interest on a full recourse loan.

A full recourse/personally guaranteed/mutuum loan is a loan in which the lender's claim against the borrower remains even if the borrower 'consumes' the proceeds. 'Consume' is not meant in the sense that what is lent is literally destroyed (although it might be, if it is for example food); but merely that it can be alienated from the borrower without destroying the borrower's obligation to the lender. The lender's claim in the contract is against the personal IOU of the borrower and is not confined to some specified property which either the borrower or lender possesses or which is purchased with the proceeds.

The modern terms 'loan' and 'debt' can mean different things. When reading old books and documents on usury it is important to keep in mind that the word 'loan' in English translations is almost always a translation of 'mutuum' or the like. It refers specifically to loans secured by the *personal guarantee* of the borrower, sometimes called a 'loan for consumption'. Not all modern 'debt' or 'loans' are secured by the personal guarantee of a borrower or borrowers.

3) Is usury always morally wrong?

Yes. Usury, profit from *mutuum* loans, is always morally wrong without exception.

4) What if the interest rate is reasonable?

Usury is always immoral no matter what interest rate is charged. The idea that usury is only charging "unreasonable" interest is a modern fiction. Usury is not an

“unreasonable” *rate* of interest: it is *any interest whatsoever* as a term of agreement in a *particular kind* of contract, the *mutuum* loan.

One cannot condone the sin of usury by arguing that the gain is not great or excessive, but rather moderate or small; neither can it be condoned by arguing that the borrower is rich; nor even by arguing that the money borrowed is not left idle, but is spent usefully, either to increase one's fortune, to purchase new estates, or to engage in business transactions. – Vix Pervenit

[Note: in the English translation of *Vix Pervenit*, the term “loan” is a [translation of \(forms of\) the word “mutuum”](#)].

5) What is the key difference between a *mutuum* and other contracts?

With a *mutuum* the borrower is personally obligated under the contract to repay the full amount of the principal, no matter what is done with the proceeds or with other specific assets tied up in the contract.

6) What if the borrower is an institution like a government or corporation rather than an individual?

“Lending” to an institution is not a *mutuum* loan, as long as the lender cannot go after individuals for recovery of the principal. An institution is not a person: it is a thing – a *societas* – an objective bundle of transferrable assets or property which can change hands and in which various parties can have various kinds of stake independent of any specific person or persons. So an institution can *itself* act as security on non recourse debt.

7) I don't get it. Why is charging interest on a loan always morally wrong?

St. Thomas Aquinas explains that usurious lending involves selling something which does not exist. This is very counterintuitive to people indoctrinated in modernity, and yet obvious once you've set aside modern anti-realism about property and economic value. Aquinas compares it to attempting to sell wine and the consumption of the wine as two separate things.

Imagine that Bob lends Harry \$100, Harry lends Fred \$100, and Fred lends Bob \$100. They each spend the money on beer, and charge 10% interest in the form of a deferred fee. The contracts attempt to entitle each of them to an additional \$10 – for a total of \$30. This \$30 worth of new financial entitlements on the books is not connected to anything ontologically real. The 2008 financial crisis was the result of a usurious network of real estate loans and ultimately circular insurance-like schemes which created this kind of ‘fake’ wealth. All usurious lending involves the creation of fake wealth.

Another way to see that what is bought-and-sold in a *mutuum* does not exist is to observe that, under the terms of the contract, it is possible for the lender to fail to recover everything he is entitled to recover under the contract. Under what are (these days) called *non recourse* contracts the “lender” is always, by definition, able to recover everything that he is entitled to under the terms of the contract: once the underlying assets have been divvied up there is nowhere else to go to recover his investment, and that is precisely what the parties agreed would be the case. If the borrower stops making payments on a non recourse home mortgage, for example, the lender forecloses on the house to recover his investment, and is not entitled to any claims extending beyond the house itself. The “lender's” economic entitlements under the contract are bound to (and bounded by) something that actually exists: the house.

The reason a *full* recourse lender is sometimes unable to recover what he is owed under the terms of the contract is because what he is owed under the terms of the contract *does not exist*.

Licit investment – or even purchase for consumption – always involves the purchase or sale of a property interest in (that is, some sort of economic claim upon) some specific property which *actually exists*. Usurious contracts pretend to be a property interest in something – in some *thing* – but the property over which they assert a claim *doesn't* actually exist at the time it is “sold”. If the property actually existed then the borrower would not have to take any action in order to produce or acquire it: if and when the borrower stopped making payments, the lender could simply claim his economic share in the actual property, because the actual property exists. That is how non recourse “lending” works, as well as all sorts of other non-usurious investment contracts.

The Magisterium makes and clarifies this distinction forcefully (e.g. [Question 31](#), [Question 36](#)).

The difference between full recourse (*mutuum*) contracts and non recourse (*societas*) contracts is central to the subject of usury; so if it isn't clear at this point, keep reading.

8) But economic value is relative, isn't it? Isn't value reducible to whatever people's preferences happen to be?

No. For example, a bunch of arsonists getting together and agreeing that burning property is valuable, and acting on that determination by burning property, don't create economic value: they destroy economic value.

9) What if the loan is secured by collateral?

Interest on a *mutuum* secured by collateral is still usury, because if the collateral is destroyed the lender can still pursue the borrower for return of the principal amount of the loan. If the lender's recourse under the terms of the contract is only to the collateral and not to the person of the borrower, it is not a *mutuum* loan and is not usury.

The difference between a *mutuum* and other contracts comes strongly into play when the loan goes into default. If the lender can (under the terms of the contract) go after the person of the borrower to recover principal, it is a *mutuum* loan. If the lender has recourse only to ontologically real assets to recover principal and any profits, the contract is not a *mutuum* and the prohibition of usury does not apply.

In non recourse (*societas*) loans a creditor can always collect precisely and entirely what he is entitled to under the contract, because what he is entitled to under the contract always actually exists — if it doesn't exist as a real asset on the inventory of real assets which secure the loan, then by definition he is not entitled to it, since his recourse is only to those things. That's what he *agreed to* when making the loan — that is the definition of a non recourse loan.

That full recourse (*mutuum*) creditors are not always able to collect precisely and entirely what they are entitled to under the contract demonstrates Aquinas' point that usury involves selling what does not exist.

10) Does collateral have to be physical?

No. There are all sorts of ontologically real financial assets or kinds of property which are not strictly or only physical in nature. For example, the loyalty and goodwill of regular patients of a dentist is a real asset which, along with the work of the dentist,

produces regular income. Said differently, a dentist's practice is an ontologically real economic asset. Dentists commonly sell their practices when they retire, for example.

For a thing to be property it must be possible for that thing to be alienated from any particular owner or possessor, so that a different person can possess it at time B from the person who possessed it at time A. It must be possible for that thing to be possessed, repossessed, bought, sold, or transferred from one owner to another. If it cannot be alienated from some particular person or persons it cannot be ontologically real property in the pertinent sense.

A personal promise to repay cannot be alienated from the person making the promise. When a loan is secured by a personal promise to repay instead of or in addition to alienable property, it is a *mutuum* loan.

11) Aren't lots of non-mutuum contracts unjust?

No doubt many are, but a contract is not usury strictly speaking unless it is a mutuum loan for profitable interest.

Nor is it denied that it is very often possible for someone, by means of contracts differing entirely from loans, to spend and invest money legitimately either to provide oneself with an annual income or to engage in legitimate trade and business. From these types of contracts honest gain may be made. ... There are many different contracts of this kind. In these contracts, if equality is not maintained, whatever is received over and above what is fair is a real injustice. Even though it may not fall under the precise rubric of usury (since all reciprocity, both open and hidden, is absent), restitution is obligated. – Vix Pervenit

[Note: in the English translation of *Vix Pervenit*, the term “loan” is a [translation of \(forms of\) the word “mutuum”](#). Interestingly, the word translated as “reciprocity” in the English version is also “mutuum” in the original, so the sentence with the parenthetical can be understood to say “Even though it may not fall under the precise rubric of usury (because these contracts are not, overtly or covertly, mutuum loans), restitution is obligated.”].

This is similar to the situation with [contraception and natural family planning](#). Just as it is possible to engage in otherwise-licit *kinds* of sex with a “contraceptive mentality”, it is also possible to enter into otherwise-licit *kinds* of contracts with a “usurious mentality”. The *kind* (species) of contract or sexual act under consideration may not be *intrinsically* immoral; but the fact that it is not *intrinsically* immoral does not make it impossible to do moral wrong in the particulars: in intentions or circumstances. The *nature* of a particular *kind* of contract may not be usurious; but it does not follow that the choice to agree to a particular contract of that kind therefore cannot be unjust.

This is exactly as we should expect it to be with a moral doctrine covering a particular species of sin. The moral prohibition of contraception, for example, is not in itself an all-encompassing theory of sexual immorality. Adultery and fornication are sexual sins distinct from contraception, and what is true in the sexual domain is also true in the domain of property: that theft and usury are distinct kinds of sins doesn't make either particularly ambiguous. Neither the prohibition of theft nor the prohibition of usury constitute Theories of Everything about the moral use of property.

12) Why would I ever lend someone money if I can't charge interest?

Mutuum contracts are only morally licit as charity. Lending money to someone in need is a good deed. If and when the borrower gets back on his feet and can afford to repay the loan, he owes the lender his money back as a matter of justice. In the middle ages, the Franciscans lent money to the poor as a way of keeping the poor out of the clutches of usury.

Furthermore, you can “lend” for profit under non-mutuum contracts. Interest on non recourse debt is not usury.

13) Didn't the Church allow the Franciscans to collect “interest” above and beyond the principal on their mutuum loans to the poor? What about “extrinsic titles?”

First, it isn't clear that these loans to the poor were in fact mutuum loans at all (see [Question 47](#)). To the extent the Magisterium has made any formal pronouncements on the matter, as far as I have been able to determine they apply to the non-recourse Mountains of Piety, and to titles which arise from matters entirely extrinsic to the contract such as negligence, theft, or fraud (see [Question 49](#)). There was certainly much discussion of the subject among theologians.

Some medievals argued (with the wide ranging of opinion typical of the human experience) that certain actual costs incurred by lending (called “extrinsic titles”) could be recovered from borrowers who could afford to pay those costs, in addition to the principal amount of the loan, under certain circumstances. Keep in mind that lending to the poor could range from simply handing a needy man money on the street and asking him to return it when he can, to something more institutional and even to agencies sponsored by the sovereign.

Borrowing money from the early Franciscan credit agencies was often a way for the down-and-out to get back on their feet, and borrowers would sometimes default anyway — even after getting back on their feet. In addition, various real costs of administering the loans were incurred by the Franciscans, although they themselves lived under vows of poverty. “Extrinsic titles” were allowed, it was argued, because it is unjust to the poor for those who have already benefited from charitable lending to deplete the supply of capital available to lend to those still in need.

In general the distinction between *mutuum* loans and other kinds of lending was not always clear in these disputations, and many different kinds of extrinsic titles were proposed and debated. The Franciscan credit agencies were precursors to modern pawn shops, making small non recourse loans with property as security rather than making *mutuum* loans. Also pertinent to understanding the various disputations is that the medievals were not concerned solely with usury strictly speaking, but with fair treatment in general. Modern commenters tend to introduce ambiguity into the understanding of *usury specifically* when reading medieval disputations, because of this more general concern with things like just pricing (see [Question 50](#)).

If Bob was on Skid Row and the Franciscans helped him get back on his feet – he now has the means to repay what he borrowed – then the kind of debt he owes is different in kind from a commercial, property based debt. He owes a debt of gratitude and a debt of justice: the former to those who helped him, and the latter to the poor who are still on Skid Row and now need his help.

If he is ungrateful and stingy and refuses to pay the loan back, even though he has the means to do so, he has committed an injustice. But it isn't an injustice rooted in *property*: it is an injustice rooted in *charity*.

Whether legal action is or is not warranted in such a case was controversial. The Dominicans thought not and accused the Franciscans of usury, even for attempting to recover the principal in the case of borrowers who could repay but refused, because they sometimes recovered more than just the principal from grateful borrowers. The Pope [intervened](#) on the side of the Franciscans with respect to the non-recourse Mountains of Piety, but this obviously does not resolve what kinds of extrinsic titles and licit legal actions might apply in the case of *mutuum* loans.

The Dominicans were arguing for their interpretation of [Aquinas' view](#) on the involvement of the civil law; but note that all parties nevertheless agreed about the fundamentally different nature of the inherently gratuitous *mutuum* loan and the licit-for-profit *societas* or non recourse investment. A licit *mutuum* loan does not involve the purchase of a property interest by an investor; it is only ever morally licit as a gratuitous act of friendship. Here is Aquinas:

Repayment for a favor may be made in two ways. On one way, as a debt of justice; and to such a debt a man may be bound by a fixed contract; and its amount is measured according to the favor received. Wherefore the borrower of money or any such thing the use of which is its consumption [that is, anything which must be returned in kind as opposed to in particular: see [Question 35](#) – Ed.] is not bound to repay more than he received in loan: and consequently it is against justice if he be obliged to pay back more. On another way a man's obligation to repayment for favor received is based on a debt of friendship, and the nature of this debt depends more on the feeling with which the favor was conferred than on the greatness of the favor itself. This debt does not carry with it a civil obligation, involving a kind of necessity that would exclude the spontaneous nature of such a repayment.

In practice a duly grateful borrower who has become prosperous through the help of charitable loans himself would become a patron of those same efforts which helped him out of poverty. But this "debt" of gratitude is not a property debt, and by its nature cannot be captured in a fixed rate of interest or other specific monetary amount. The very act of attempting to convert a debt of gratitude or friendship – above and beyond simply what was actually borrowed – into some definite charge of a specific amount of money, puts the lie to attempts to disclaim usury.

Gratitude or friendship can be truly owed; but gratitude or friendship which can be bought and sold for a specific price is not true gratitude or friendship.

My own understanding of extrinsic titles is that if they involve an entitlement which would not arise anyway *without* being included in the contract, they cannot be *extrinsic* to the contract. Certainly titles which arise from theft, fraud, and negligence could arise independent of the contract. But if a particular title has to be included in the contract in order for it to be a legitimate title, it is by definition not an *extrinsic* title.

14) Hasn't the Church approved charging interest to recover opportunity costs? What about the time value of money?

No. One of the most controversial of the proposed "extrinsic titles" was *lucrum cessans*, which some interpret as a blanket license to recover opportunity costs (even though opportunity costs are not ontologically real: see [Question 15](#)) from *mutuum* loans. But although the Magisterium has approved the concept of extrinsic titles generally speaking for some kinds of "loans" to the poor (basically to defend the Franciscans, in

their work helping the poor, from the charge of usury), there is no Magisterial proclamation giving a detailed account of which “extrinsic titles” are and are not valid and when they apply.

Furthermore, recovery of “opportunity cost” or the “time value of money” as something in itself has been explicitly condemned by the Magisterium:

[The following proposition is condemned as erroneous:] Since ready cash is more valuable than that to be paid, and since there is no one who does not consider ready cash of greater worth than future cash, a creditor can demand something beyond the principal from the borrower, and for this reason be excused from usury. – Various Errors on Moral Subjects (II), Pope Innocent XI by decree of the Holy Office, March 4, 1679 (*Denzinger*)

It has also been established that [Magisterial silence on a moral or doctrinal question does not constitute approval](#). Those who insist that the Magisterium has approved the title of *lucrum cessans* at all, let alone that the proposed title can be interpreted as a license to recover opportunity costs in for-profit mutuum loans as opposed to charitable loans to the poor where there is no intention of recovering even the principal from those who cannot afford it, are simply wrong. The reason why these folks never produce a Magisterial proclamation to that effect is because it never happened.

15) Shouldn’t an investor be compensated for giving up the opportunity cost of investing his money in something else?

No. [Opportunity costs are not ontologically real assets](#). When a mutuum lender attempts to sell his “opportunity cost” to a borrower in exchange for interest payments on the loan, the *thing that he has attempted to sell* does not actually exist. If it actually existed then when the borrower defaults the lender would be able to foreclose and retrieve his property, or the property in which he has purchased a claim. The fact that he cannot do so demonstrates St. Thomas Aquinas’ point that charging interest on a mutuum loan (usury) involves selling what does not exist.

16) Doesn’t the future labor of a worker constitute a ‘real asset’ against which a loan can be collateralized?

No. The “future labor of a worker” is a *potentiality*, not an *actuality*. This potentiality inheres in a *person*, not an *asset*. It is morally licit to purchase *assets* (including assets with potentialities), but it is not morally licit to purchase *persons*. The “future labor of a worker” is not an *asset* or *piece of property*: it is not something the ownership of which can be transferred from the worker to the lender when the transaction is made, because the future labor of the worker cannot be alienated from the worker himself.

17) Traditionalist scholastics claimed that you can’t sell time; progressive scholastics asserted that the worker’s wages are a counterexample. Weren’t the progressives right?

No. Time is just a convenient proxy for the worker’s actual productivity. If time itself were a salable asset then the worker would be entitled to compensation even if he stayed home in bed and never came to work.

The worker is paid wages for what he, through his own powers, *makes actual*. *Actualities* have their own distinct existence, whereas *potentialities* inhere in actual things from which they cannot be separated. It is licit to purchase and sell actual things, whether for consumption or in order to acquire economic potentialities which *inhere in actual things*. But it is not licit to purchase *persons* to acquire economic potentialities which *inhere in persons*. Attempting to purchase the

potentialities of a person is an attempt to purchase an economic share in a person, as opposed to a thing: this is what makes usury fall into the same genus as slavery.

18) Traditionalist scholastics claimed that you can't sell risk; progressive scholastics asserted that an insurance bond is a counterexample. Weren't the progressives right? No. If risk qua risk were a financially transferrable asset, gamblers would be entitled to a profit. An insurance bond is just a pooling of financial assets in which one party benefits when things go according to plan, and the other party's losses are mitigated by financial compensation if things don't go according to plan. As long as recourse is limited by the contract to the pool of real assets, however it is structured, the arrangement is not usury.

19) Is a corporate bond usury?

No. Investors who lend money to corporations cannot pursue individual shareholders for return of principal. The claims in a corporate bond are claims against *property* which *actually exists in its own right*: the corporation. Corporations are themselves property: they can be bought and sold and their employees – the workers who “farm” the property – sometimes change completely from one set of people to another. Like a farm, a butcher shop, a farrier business, a hunting ground, etc. a corporation is *property* which can be alienated from particular persons. Sale of claims against *property* – claims bound to *specific property* and *only that specific property* – is a sale of something that *actually exists*. It is still possible for the *prices* of those claims to be unfair, etc: see [Question 11](#). But contracts like corporate debt are not usury strictly speaking, as long as they are bounded: as long as they are claims against *specific property* and do not assert any personal guarantees by specific persons.

See also [Question 31](#).

20) Is a car loan usury?

Almost always. It is usury unless it is a non recourse loan.

21) Is a home loan usury?

A non recourse home loan is not usury, because the lender has recourse to the house and the house alone for recovery of principal and interest. In practice most mortgages allow for a deficiency judgment against the borrower, though, and those mortgages are usurious.

22) Are credit cards usury?

Yes. All interest-bearing unsecured loans to individuals are usury. Even secured loans are usury if they provide for a deficiency judgment against the borrower in a case of default.

23) Does this mean that I can't take out a student loan without committing mortal sin? Here is Aquinas' answer (ST II-II, Q78, A4):

Accordingly we must also answer to the question in point that it is by no means lawful to induce a man to lend under a condition of usury: yet it is lawful to borrow for usury from a man who is ready to do so and is a usurer by profession; provided the borrower have a good end in view, such as the relief of his own or another's need. Thus too it is lawful for a man who has fallen among thieves to point out his property to them (which they sin in

taking) in order to save his life, after the example of the ten men who said to Ismahel (Jeremiah 41:8): “Kill us not: for we have stores in the field.”

Since borrowing at usury is inherently scandalous, it probably depends on the extent of the need. But you’ve got pretty wide moral discretion to hand over your property to thieves, so you’ve probably got similar prudential latitude here. As a matter of *intrinsic* morality, usury – insisting on interest when making a *mutuum* loan – is a sin on the part of the lender, not the borrower.

24) What is wrong with [contracts](#) between consenting adults?

That is a [different but related subject](#). Contracts are always negotiated in the shadow of the law, which limits what kinds of contracts are enforceable and affects the negotiating positions of the parties. If the government should decline to enforce a contract wherein a person sells himself into slavery, the government should likewise decline to enforce a contract wherein a borrower enslaves himself through usury.

25) Aren’t all unproductive loans usury? Wasn’t Belloc right when he said that the distinction between usurious and non-usurious loans was that the latter are productive?

This is a common misunderstanding of well-intentioned people who would like usury to be taken more seriously as a moral wrong. Usury is actually more clear and straightforward than they propose: all *mutuum* loans for profitable interest are usury, and other kinds of contracts are not usury. (That doesn’t mean that other kinds of contracts are morally licit by definition: just that they are not usury.)

This view is based on an erroneous understanding of what is meant by ‘loan for consumption’, assuming that the opposite of a loan for consumption must be a loan for production. This brings in all sorts of intellectual baggage and conflicting views from economic theory which are irrelevant to usury.

The idea that an interest-bearing *mutuum* loan is not usury when the money is spent productively was condemned in the encyclical *Vix Pervenit*. An interest-bearing *mutuum* loan wherein the borrower invests the proceeds in some productive activity is just as usurious as an interest-bearing *mutuum* loan wherein the borrower spends the money on wine, women, and song. That the contract is usurious is established by the fact that it is a *mutuum* charging interest, independent of how the borrower happens to use the proceeds.

Beyond that, “unproductive” non recourse loans are *not* usury. If I have equity in my home and I sell some of it to a non recourse “lender” to raise cash for a vacation, that is not usury: I have simply decided to spend some of the capital that I own on a vacation. ([Regimini Universalis](#): non recourse borrowers “encumber their goods, their houses, their fields, their farms, their possessions, and inheritances”). The lender cannot come after *me* for recovery of his principal and interest: he can only go after the *house* that he and I now co-own; and the “interest” I pay is just a rental fee for the share of the house that he now owns after I sold it to him. The focus on “productive” versus “nonproductive” arrangements is a distraction from the straightforward nature of usurious contracts, introducing unnecessary complexity and ambiguity.

26) Haven’t commerce and currency changed in such a way that usury is no longer much of a concern?

No. Usury and the creation of faux-wealth through usurious contracts is a pervasive problem in modern economies, and the [nature of currency has not changed](#). However,

even if we postulate that the nature of currency *has* changed, that does not alter the prohibition of usurious lending, properly understood.

It turns out that the kind of currency used is irrelevant to the issue of usury ([Question 35](#)), so various opinions about fiat currency, so-called “hard” currency, and other trading tokens or fungible commodities are entirely distinct from the subject of usury per se. If a contract is usurious it is necessarily usurious in all of those different kinds of currencies. So even if you disagree with me about the nature of currency, our different views on currency do not have any effect on the condemnation of usurious loans denominated in those currencies.

We exhort you not to listen to those who say that today the issue of usury is present in name only, since gain is almost always obtained from money given to another. How false is this opinion and how far removed from the truth! We can easily understand this if we consider that the nature of one contract differs from the nature of another. – Vix Pervenit

27) Isn't the government the biggest violator of them all?

[No](#). A sovereign guarantee is not the same thing as a personal guarantee. Sovereign debt was treated as something different from full recourse loans by the medievals, and the sovereign differs from individuals in several important ways. Two of the most important are that the sovereign is not a person but, qua sovereign, is an institution; and the sovereign has the power to issue currency. The sovereign may pay “interest” with tax receipts, but it is no part of the contract that he *must* do so; so even the notion that government debt intrinsically requires full recourse to taxpayers is wrong. The place to discuss this is in the [linked post](#) not here, because it is really off topic from the subject of usury. (Note: see also more recent discussion on related subjects [here](#), [here](#), and [here](#)).

It turns out that the kind of currency used is irrelevant to the issue of usury ([Question 35](#)), so various opinions about sovereign debt and fiat currency are entirely distinct from the subject of usury per se.

This doesn't mean that the way our government is acting is wise, prudent, or even somewhere in the vicinity of sane. It just means that sovereign debt is not usury: it is a categorically different subject.

Many government practices may be not only imprudent but *intrinsically* immoral, without being usury. For example I've advanced a couple of arguments that [property taxes are intrinsically unjust](#), and neither postulates that property taxes are usury strictly speaking, although the first draws on concepts related to usury.

This is exactly as we should expect it to be with a moral doctrine covering a particular species of sin. The moral prohibition of contraception is not in itself an all-encompassing theory of sexual immorality. Adultery and fornication are sexual sins distinct from contraception, and what is true in the sexual domain is also true in the domain of property: that theft and usury are distinct kinds of sins doesn't make either particularly ambiguous. Neither the prohibition of theft nor the prohibition of usury constitute Theories of Everything about the moral use of property. Folks who attempt to turn the moral doctrine on usury into an all-purpose sledgehammer for advancing their own broader economic theories do a disservice both to the doctrine and to their theories. That usury is a particular kind of sin and does not cover all sins in the domain of money and commerce was affirmed in *Vix Pervenit* (see [Question 11](#)). The main point for present purposes is that issues of fiat currency, taxation, and sovereign debt are distinct from the subject of usury. Usury by definition is profitable interest charged on a mutuum loan: a freely entered contract between a *person* (the

borrower) and some lender (either a person or an institution), wherein the borrower *personally* commits to pay back the loan.

28) Who the heck are you to be lecturing us all on usury, anyway?

I'm just some guy. I have an MBA, I've started and run a few small companies, and I have quite a bit of experience as an investor. I became interested in usury in 2008 during the financial crisis, and was surprised to find myself in perfect agreement (as best as I can tell) with St. Thomas Aquinas on the subject. I've read every single Magisterial statement on the subject in Denzinger, everything I could find by Aquinas, a number of old books, some academic papers, and a bunch of stuff on the web. I think I have it right, but I'm not some high-falutin authority.

Part of what made the usury doctrine clear to me when I first really began to grasp it (as opposed to – and I was as guilty of this as anyone – superficially dismissing caricatures rooted in anti-realist modernism) is that as an investor and entrepreneur, I see investment contracts involving personal guarantees of repayment as inherently dysfunctional. If either the investor or the entrepreneur feels the need to throw personal guarantees into the mix in order to get the deal done, that is a major red flag that the proposed capital structure of the investment doesn't make sense on its own terms. Usually this is because the property risks – the risks of partial or total loss of capital invested – in the investment are high enough to make a simple fixed-interest debt instrument inappropriate. Instead of personal guarantees the structure should be something like a convertible note, with equity upside, or it should be secured by a larger base of existing (though probably illiquid) capital. Basically, someone is trying to consume capital they don't have and/or shift their own risks – the risks inherent in their own portfolios of property – onto third parties, personally.

Anyway, I haven't really added anything new to the ancient understanding of usury here. I was just a guy who happened to be standing in the right spot to see what caused the train wreck, and I'm trying to explain what I saw in our common modern language as best I can. Like theft usury often does pay, at least in the short run, and it causes all sorts of damage that impacts different people differently and unfairly. Usury is inherently dysfunctional and morally evil, like theft. It may be mildly interesting sociologically that the Catholic Church was right for millennia about a simple core financial and moral truth that modern people, for all their putative economic and technical sophistication, have gotten completely wrong.

29) I know that usury was traditionally considered an execrable mortal sin. But didn't the Church change canon law and pastoral practice to remove the penalties and stigma associated with usury? Haven't most Catholic theologians accepted that the world has moved on from the time when the prohibition of usury made sense?

Well, you asked, so I'll editorialize and give you my personal take.

My answer is yes. The progressive tactic of divorcing doctrine from pastoral and juridical practice is not a new Vatican II innovation targeted specifically at matters of sex and marriage. Earlier progressives were "successful" in leaving the doctrine on usury formally intact, as a kind of decoration that makes no important demands on anyone, despite their attendance of the traditional Latin Mass. *Humanae Vitae* could easily become the new *Vix Pervenit*. Contraception apologists have learned from earlier usury apologists and are using the same tactics. Progressives think that money is inherently fecund and that sex isn't inherently fecund.

Acceptance of usury and contraception are both products of denying that things have an objective nature independent of human preferences. Centuries of 'pastoral' acceptance and indoctrination of economic relativism paved the way for other expressions of moral relativism.

You might think of this as the "hermeneutic of continuity of Hell".

It should be said though that getting rid of the ecclesiastical penalties for usury was a pastoral judgement call, and I don't necessarily disagree with it. For example prior to a declaration by the Holy Office ending the practice on August 31, 1831, it was frequently imposed that a usurer had to make an accounting of all the money he had made through usury and make restitution before he was given sacramental absolution. This is completely disanalogous to the situation of a divorced and 'remarried' person who is objectively committing adultery on an ongoing basis. The former may be totally repentant and fully committed to sinning no more without having the practical means to do the accounting and make restitution. The latter by definition is not committed to sinning no more. Material restitution for past wrongs, in short, is an entirely different pastoral subject from the basic sacramental requirement for a firm purpose of amendment.

It was also the case that usury was frequently misunderstood, and many contracts which were not usury were condemned as such by overzealous but financially ignorant people. An analogous case in the context of the sexual revolution would be the 'rigorists' who [condemn NFP as a form of contraception](#), and their 'laxist' counterparts who make the same claim but conclude from it that therefore contraception is morally licit. Aquinas and the Popes who addressed the issue in bulls and encyclicals may have understood the difference between non recourse (*societas*) investment and full recourse (*mutuum*) loans, but many priests at the parish level did not. The spectacle of a penitent, innocent of usury, hounded and denied absolution by an overzealous confessor who doesn't properly understand the subject, may be a risible fiction now; but that was not always the case.

This was especially confounded by progressive scholastics' use of a proposed distinction between putatively 'productive' interest bearing *mutuum* loans to businessmen (explicitly condemned in *Vix Pervenit*, see [Question 25](#)) and putatively 'unproductive' *mutuaa*. The argument over 'productive' vs 'unproductive' *mutuum* loans snookered the traditionalists by framing the debate in question begging terms, obscuring the essential distinction (the distinction, unlike 'productive'/'non-productive', actually found in Magisterial documents on usury such as *Cum Onus* and *Regimini Universalis*) between *mutuum* (full recourse) loans and legitimate non recourse (*societas*) business investment.

An especially pernicious false-flag argumentative tactic of present day usury apologists is to take the 'rigorist' approach as a way of discrediting the doctrine. These will contend for example that the traditional understanding of usury would disallow *all* census-type contracts involving regular payments of principal and interest (e.g. corporate bonds), not just those census contracts with claims that terminate in *persons* as opposed to or in addition to actual *property*. (See [question 31](#)). This 'false flag' approach is aided and abetted by useful idiots on the traditionalist or reactionary side who cheer on their 'rigorist' arguments.

None of that has any bearing on the objective status of usury as an execrable mortal sin.

Usury would of course be intrinsically immoral even if that did, counterfactually, make industry and commerce impossible or if it were unhealthy in some sense for industry and commerce — just as contraception would remain intrinsically immoral even if the lack of it led inexorably to overpopulation and misery. But the moral prohibition of charging usury does no such thing. Like moral doctrine on contraception it merely prohibits actions which are objectively harmful both to the parties involved and to the common good – even though they do involve a short term ‘payoff’ of sorts, which is why they are tempting. This is why the arguments in favor of laxity on contraception and usury tend to mirror and cross-reference each other (myriad [examples](#) can be found simply by Googling various combinations of the terms “usury”, “Catholic”, and “contraception”).

Apologists for contraception have learned the playbook from the apologists for usury: give lip service to the doctrine as an important decorative piece of theology up in the sky; “pastorally” defang it so that in practice it can be ignored on the ground; continue to “dialogue” until the right “pastoral” result is achieved; paint any opposition into a corner as unmerciful, impractical, and disconnected from reality; and assert that this “pastoral” result was a development of doctrine, ignoring the dog that doesn’t bark — the nonexistent teaching documents from the Magisterium representing an actual doctrinal “development”. Do the latter enough times over a long enough period so that everyone starts to accept it as a given, including much of the clergy. Continue to point out various “defects” in the “simplistic” understanding articulated in Magisterial documents, and be sure to reiterate regularly that they are not infallible. Oh, and point out the sexual peccadillos, I mean economic practices, in clergy and the Vatican: because if the Vatican does something in its secular operations or practices that constitutes an infallible proclamation that the practices cannot be immoral, as long as they are the things we want to not be immoral, and anyway it isn’t really immoral but if the Church actually means what it says doctrinally in those defective non-infallible documents then it is being hypocritical. Shout down any alternative description of the situation on that front as excuse-making. Once all that is achieved all remaining objections must be marginalized and ridiculed. Pat the old celibate economically illiterate men in the Holy See on the head for their prior silly immaturity, congratulate the laity for its wisdom about the “facts of life” and the *sensus fidelium*, and *move on*. But it turns out that the prohibition of charging usury is and has ever been a perfectly reasonable limitation on morally licit commerce; a limitation which merely disallows trafficking in human beings as if they were property and thereby creating fake wealth, vested in nonexistent property, which pollutes the real economy.

30) If the sovereign should [decline to enforce usurious contracts](#), doesn’t it follow that the sovereign should decline to enforce any contract of exchange whatsoever which empowers one party to pursue a deficiency judgment against the other party personally, independent of any real assets posted as security?

Yes. See questions [35](#) and [36](#). An “exception” of sorts applies for cases of theft, fraud, and negligence. But in these kinds of cases the content of the contract itself is irrelevant: any extrinsic title that the wronged party has to damages in the case of negligence or crime is a title he has no matter what the contract says (see [Question 49](#)).

31) I really don’t get it. Why again do you say that fixed-income investments in (e.g.) corporations (corporate bonds) are not usury?

A (non-usurious) corporate bond is not secured by any personal guarantees: it is only secured by the corporation itself, which is an *asset* (something which can be owned and sold) not a *person or persons*. A corporate bond is a kind of contract which used to

be called a *census*. An example of a *census* is an investor paying for seed and supplies for a farmer in exchange for a fixed quota of the farm's expected output, converted into a regular cash payment. This is morally licit as long as it is secured by the farm as a bundle of assets or property, not by a personal guarantee from the farmer.

Pope Pius V declared in the bull *Cum Onus* (January 19, 1569) that the difference between a licit *census* and usury was that in a licit *census*, the income and principal were guaranteed by the assets – the farm – and not personally guaranteed by the farmer. Licit *census* contracts must be secured by a 'fixed, immobile good' – alienable property – not by a personal guarantee of repayment.

Modern economic theorists have misunderstood this by assuming that 'money' is not a 'fixed, immobile good', and therefore conclude that usury doctrine depends upon some particular theory of money which at best no longer applies. But in doing so they fail to make the distinction clearly made by Aquinas (see [Question 52](#)) and the Magisterium between actual money (or other alienable property) in the possession of the borrower and a mere personal promise, by the borrower, to repay.

It isn't that 'money' (understood equivocally) fails to be a 'fixed, immobile good': it is that a personal IOU, a mere personal promise to repay, fails to be a 'fixed, immobile good'. Actual money in possession (financial securities or other property conventionally used for exchange), or other property securing the loan, can be alienated from the borrower and repossessed if the borrower stops making *census* payments. Personal IOU's cannot be alienated from the borrower and repossessed.

Personally guaranteed *census* contracts were declared to be illicit, as were *census* contracts where redemption of the principal could be forced by the buyer ("lender") before the term of the *census* contract expired, as were *census* contracts which could not be redeemed at any time by the seller ("borrower").

[John de Lugo](#) explains that the correct concept of the *census* is that:

... part of the usufruct of the field on which the census is constituted is bought. Then, ... by another contract, which is implicitly contained in the very constitution of a real census, it is agreed by the parties that, for the hope of the fruit which the buyer has from that usufruct, the seller binds himself to pay such an annual payment of money; — and in this way the prior contract is reduced to the obligation of paying only an annual sum, by which the seller redeems the partial usufruct of the field which he had sold; the field itself, however, remaining really obliged in the manner of a pledge for the payment of the promised money ...

(Noonan, *The Scholastic Analysis of Usury*, Oxford University Press, 1957).

When you own a corporate bond, you own a property interest in the corporation – an objective thing. Corporations are *things*, generally aggregates of *things*, and can be owned and sold as property. (If they weren't *things* – if they were *persons* – it would be immoral to own them, trade shares in them, and the like). That's why it is always possible to foreclose on the corporation and claim your property: because the thing you own *actually exists*. (That its value may have been reduced to nothing by business misfortune is irrelevant: a house can burn down, but the fact that it can burn down doesn't mean it is not a *thing*).

A personally guaranteed note *looks*, superficially, like the same sort of contract; but it isn't. It – specifically the personal guarantee – isn't a property interest in a *thing*. It attempts to assert a property interest in no *thing*: nothing. The fact that you cannot

foreclose and collect your property demonstrates Aquinas' point: the *thing* in which the contract asserts an ownership interest or other claim is no thing at all: nothing. The apples have been eaten, the wine has been drunk, and the borrower has to take action to acquire new, different apples or wine precisely because the *thing* to which the mutuum lender lays claim *does not exist*.

A mutuum for interest looks superficially like a census contract against a farmer's field, as described by John de Lugo and affirmed as morally licit by Pius V. The difference is that there is no field: instead of representing a de-facto buy-leaseback of a claim against a field or other actual property, the personally guaranteed note represents a buy-leaseback of nothing at all.

32) In [question 16](#) you say that the value of future labor is not a real asset which can be used as collateral on a for-profit loan. But wasn't it relatively common before the modern era for people to be sold into slavery to pay off a debt?

Yes. [Both are true](#). It is possible that moral waffling on chattel slavery kept the door open for usury in many peoples' minds. Other people might see prison jobs as a kind of 'slave labor' and propose that it is immoral to throw people into prison just to get work out of them, even if they are willing to agree to it. But that kind of speculation and casuistry aside, clearly a slave's future labor cannot, as a matter of objective fact, be alienated from the slave himself.

33) Doesn't St. Paul tell slaves to obey their masters?

Yes, though that probably doesn't have the implications that modern people presume it to have. The [language may not mean](#) what [they think it means](#), the relation between master and slave is (like the relation between usurer and borrower) [morally asymmetrical](#), moral doctrine [actually does develop](#) as we gain a deeper understanding of eternal truths and encounter new situations, modern people generally have a distorted concept of [property](#), and we also [tend to view any sort of subjection to authority as dehumanizing](#).

It is true though that, at least in my understanding of the moral theology, rejection of chattel slavery and of usury are [closely connected](#).

34) Doesn't the safe harbor of personal bankruptcy imply that modern loans are really non recourse?

No. Even with the safeguard of personal bankruptcy, a usurious contract is – by its full recourse nature – a purchase of the potentialities of a *person*. The potentialities of a person are not something which *actually* exist at the time of purchase. Recall that, in order to "own an economic share" in (or have economic access to) the *potentialities* of a thing, you must own a share in (or have some sort of property claim against) the *actual* thing; and it is not morally licit to buy and sell economic shares in *persons* as if they were *property*.

Continuing the comparison to slavery (since usury and slavery are in the same moral genus), that a slave might have certain legal remedies in the case of an abusive master, or might under certain conditions have an opportunity to escape his condition, doesn't make him any less a slave. He might be in better shape than other slaves who lack those remedies and opportunities; but he is still a slave.

Furthermore, that personal bankruptcy protection is available in cases of extreme financial duress does not change the fact that mutuum contracts require return of what is lent *in kind* as opposed to *in particular* ([see Question 35](#)): that what is loaned is, in Aquinas' terms, consumed in its use by the borrower. The mutuum loan

for interest still charges rent for literally no thing, nothing, and is therefore intrinsically unjust. Personal bankruptcy protection therefore does not change the basic nature of a usurious contract.

35) What if the mutuum loan is made in wheat, gold, or rental cars rather than fiat dollars?

Notice that, in a mutuum loan, what is returned to the lender by the borrower- who personally guarantees this return under the contract terms – is not the actual, original things which were borrowed. Instead what is returned is ‘in kind’ — a mutuum loan of a car would require the borrower to return a brand new car (or any old car) at the end of the contract, not the actual car which was borrowed. The mutuum inherently treats the currency used as fungible: as a kind of thing where any one unit of currency is interchangeable with any other. Once the borrower has *used* what was lent under a mutuum loan, he no longer *possesses* it and cannot return it in particular to the lender. So it doesn’t really matter what was used as the exchange token or currency in the mutuum contract. If the contract requires the borrower to personally pledge to return *in kind* rather than *in particular* it is a mutuum loan, and charging interest is usury.

A personal commitment to return ‘in kind’ is a commitment to return something which *doesn’t* actually exist as an actual thing: it is just abstractly a ‘thing’ of such and such a kind. A commitment to return ‘in particular’ is a commitment to return something which *does* actually exist as an actual thing. Formally, then, the distinction between *currency* and *property* in the context of an investment contract is that currency is returned *in kind*, while property is returned *in particular*. The former is the basis of a *mutuum*; the latter is a necessary ([but not sufficient](#)) condition for the formation of a licit *societas*.

A licit *societas* can and frequently does create in-kind investment returns when things go according to plan (“From these [non-mutuum] contracts honest gain may be made.” – *Vix Pervenit*). But all contractual claims of all parties must terminate in actually existing property, not in claims against persons, in order to avoid usury. That’s why asking the question “what if things don’t go according to plan?” is particularly helpful in distinguishing usurious contracts from non-usurious contracts.

St. Thomas Aquinas refers to objects pledged in kind as objects “consumed in their use”, as distinct from objects pledged in particular. This obviously doesn’t mean that the original gold coins are literally eaten or melted down and destroyed by the borrower (although that could be the case in a *mutuum* loan of, say, food). It just means that the original gold coins [are no longer in the possession of either the lender or the borrower once the borrower uses them](#). A *mutuum* is that kind of agreement: a pledge to return *in kind* as opposed to *in particular*.

It is true that the usurer might accidentally receive back some of the very same gold coins (say) that he loaned, as those coins circulate. But that is purely accidental: what the *mutuum* contract requires is that the borrower personally guarantee return of the principal *in kind*, not preserve and return actual real rented or co-owned assets *in particular*.

36) Wait, does this mean that if I lend out my car and the borrower destroys it, he doesn’t owe me anything?

It depends on the particulars of the contract. The guiding principle is that contracts with recourse to real, specified assets (and only those real, specified assets) are licit as profit-producing investments. Full recourse contracts are not licit as profit-producing investments.

First, it should be said that matters of theft, vandalism, fraud, negligence and the like are criminal matters and therefore fall outside of what is intrinsic to the contract itself. (See [Question 49](#)).

But accidents do happen, so suppose that one did happen and the car was destroyed. Maybe a meteor struck the car and destroyed it. Lets also suppose that this was a commercial rental for profit: the borrower was contracted to pay for the use of the car, it wasn't just a friendly loan.

If the borrower posted security and/or the purchase of insurance coverage was part of the contract, the security and/or assets of the insurance company will cover the loss.

However, if the contract says that the borrower owes (say) \$5000 if the car is destroyed, and that he is personally on the hook to pay interest on the \$5000 if he can't pay it all at once, then that is usury.

Unsecured contracts for profit are problematic in general when they (explicitly or implicitly) assert recourse to particular persons to recover losses. A licit contract should always cover the various contingencies, fully terminating in real, existent assets which secure the contract, in order to avoid usury. If the lender wants \$5000 in security to cover the car in case of an accident he should get it as a deposit, a lien on home equity or other property, or as an insurance bond instead of trying to collect it after the fact.

Usury on the borrower's side frequently involves attempting to spend money or risk other resources that you can't actually afford based on the assets you actually own. If you can't afford to post security or pay for an insurance bond, you probably can't really afford the risk of renting the car.

Here is the Magisterium on the specific question (Pope Callistus III (1455-1458), Usury and Contract for Rent), describing a morally licit contract (full citation [here](#)): *But the [lender], on the other hand, even though the said goods, houses, lands, fields, possessions, and inheritances might by the passage of time be reduced to utter destruction and desolation, would not be empowered to recover even in respect of the price paid.*

That is, a licit income-producing rental contract (which might or might not be labeled a 'loan' in modern language) is *non recourse*.

37) I see that the Magisterium and Aquinas have actually been clear that lack of explicit recourse to real assets is central to usury: that full-recourse lending for profit is what is defined as the moral problem. But why is that the case?

Usury involves treating people (subjects) as things (objects), because it involves purchasing "Bob owes me principal and interest" as opposed to purchasing shares in that project there or that bundle of assets there, distinct from particular persons. The most extreme form of treating persons as property is chattel slavery. (Some authors beg to differ, seeing [usury as worse](#), and the argument has some merit). Usury is in the same moral genus as slavery.

Furthermore, "Bob owes me principal and interest" is not a *thing* which *actually exists*. Charging rent for literally nothing, no *thing*, is intrinsically unjust.

38) But you've said that intangible or only partly tangible things like patents and operating businesses can be 'objects', and thus can be property. So how do I tell the difference between what can be ontologically real property and what can't? Ontologically real property consists of *objects*. (Property in general refers to a [relation between owners, subjects, and objects](#); but what we ordinarily call 'property' as a noun are the *objects* in this relation). Objects can be alienated from persons and possessed or controlled by different people at different times. Modern economics is very anti-realist: it is under the delusion that economic value is purely subjective, that is, purely a function of human preferences whatever they happen to be. But economic value is not purely subjective: it has an ineliminable objectivity. (Modernity in general is characterized by anti-realist materialism).

Objects, very generally speaking, are things which have an existence that is independent of particular persons (subjects). The contrary of *object* is *subject*, so objects are things that exist in their own right independent of persons: things which are not persons and which are capable of being exchanged independent of particular persons.

Non recourse loans represent ownership claims in *objects*: the specified assets to which the lender has recourse (under the terms of the contract) to recover principal and interest. Full recourse loans attempt to assert an ownership interest in *persons*, as opposed to (or in addition to) objects.

Notice that when Bob dies, the 'value' of his full recourse debt (qua full recourse) dies with him. The value of any non recourse debt contracts does not die with any particular person, precisely because that value is tied up in the specific *objects* not in a particular *subject* (person). Everything that a non recourse lender is entitled to under the contract can always by definition be recovered (absent theft, fraud, vandalism, or other criminal acts) from *objective* reality. Even if the value of the collateral goes to zero, it was specified in the contract that that specific collateral is all the non recourse lender is entitled to recover. That is what the lender agreed to, by the definition of a non recourse contract.

Full recourse lenders frequently fail to fully recover their contractual entitlements precisely because those entitlements are to 'things' which are not *real*.

39) But wait, can't a full recourse creditor go after Bob's estate when he dies? Recourse to particular persons – recourse to Bob – the part that makes the loan full recourse – dies with Bob. The *person* to whom the contract terms specified recourse (implicitly or explicitly) was Bob, and Bob is now gone from this world. It is (sometimes but not always) true that creditors can go after the deceased's estate, but that is similar to a situation with a full recourse mortgage. It isn't lack of security that makes a loan full recourse: it is full financial recourse to the person independent of named assets that makes a loan full recourse.

In effect, when a person dies his full recourse debt (sometimes) converts to non recourse debt, with his estate as the assets. But it no longer exists as *full recourse debt*: there is no longer any particular *person* that the creditor can pursue for recovery of principal and interest; only assets.

40) Doesn't the Vatican Bank make full recourse loans?

I don't think so, but I don't really know the answer to that question and it isn't really relevant.

Most institutional borrowing and lending is non recourse, so the point that the [Catholic Encyclopedia article on usury](#) makes about ecclesiastical properties is irrelevant to the question of usury. On the other hand I think there were ATM

machines in Vatican City when I was there, so there is probably at least close business done with usurers. Almost everyone does close business with usurers in the modern first world.

Stipulating all that though wouldn't have any bearing on the moral issue. The Church has been quite explicit not just that [silence on a question is not evidence of approval](#), but that the actual secular practices of the Church have been wrong at times. See CCC 2298 for example. The fact that the Church does something institutionally (stipulated, though in this case that is not established) [does not constitute moral approval of it](#).

41) What about that Catholic Encyclopedia article, anyway?

The CE article fails to distinguish between full recourse (mutuum) loans and non recourse (societas) loans; a distinction central to some of the authoritative Magisterial pronouncements on usury (e.g. see Questions [36](#) and [31](#)) and central to Aquinas' understanding of a "loan". The point it makes about mortgaged ecclesial properties is irrelevant, for example, because the Church is an institution not a person and ecclesial mortgages are not financed via personal loans or loans secured by personal guarantees. The best that can be said is that failure to distinguish between mutuum loans and other kinds of contracts creates ambiguity in the article.

The fact that the CE article attempts to undermine the authority of a papal encyclical (*Vix Pervenit*), and considers undermining the authority of that encyclical central to its thesis, should also be considered. Defenders of the article frequently [assert without evidence](#) that this article by a group of New York publishers reflects the mind of the Holy See at the time. The most that can be said about that is that the CE passed the [review of Catholic censors under the local ordinary](#); but that hardly makes the views expressed in it unambiguous, let alone magisterial.

42) Why do you say that the 2008 financial crisis was founded in usury?

The root cause of the 2008 financial crisis was full recourse real estate loans with shaky-to-ludicrous loan-to-value ratios. Without that inventory of bad loans at the bottom of the pyramid the whole 'real estate bonds with ratings "enhanced" by a self-referential circular network of credit default swaps' scheme would never have 'worked'.

Usury was not the only kind of morally fraudulent financial activity involved, however. See [this post](#) for my gloss on the circular securitization which was layered on top of the pyramid of usurious loans.

Without enforcement of usurious (that is, full recourse) contracts, sane lenders interested in their own financial survival would not make (non recourse, which would be the only sort enforced by the government) loans with shaky-to-ludicrous loan-to-value ratios. That wouldn't solve all of the world's problems, of course, but it would make it harder to engage in many of the Ponzi-like schemes which arise in highly abstracted financial markets.

The reason usury 'works' is because usurers can buy 'slavery shares' in individuals (as opposed to property shares in assets); and individuals of little means are tempted into it because selling a part of themselves into slavery makes them feel (and spend) as if they were wealthier than they really are.

43) Does this mean that ideally consumers should always pay cash for things like houses and cars?

Not necessarily. There are probably plenty of times when it makes perfect sense for a “lender” and “borrower” to, say, collaboratively purchase a house or a car together for the borrower to occupy or use.

What it means is that people who cannot come up with enough security (in the form of down payments, insurance bonds, liens on other real assets and the like) would not get a loan for something that they really cannot afford. It means that in general, market forces would keep loan-to-value ratios sane. Without the capacity to pursue borrowers qua persons independent of real assets, lenders and borrowers would have to operate within their own means and would not pollute the common good with fraudulent economic value which does not actually exist.

See [this post at the Orthosphere](#) for a more in depth discussion.

44) Suppose I am thinking about agreeing to a financial contract which will produce some interest or other profit for me – say by opening a bank account. How can I be sure that what I am about to do is not usury?

If you can identify specific individuals who are personally liable under the agreement to return your principal and pay you profitable interest, the contract is usury. If you cannot identify any such individuals, the contract is not usury.

Banks themselves do tend to make full recourse (that is, usurious) loans to individuals. Opening an interest-bearing account is therefore remote material cooperation with evil when that is the case – and it is almost always the case in modern economies. However the interest bearing savings or checking account agreement you make with the bank is not full recourse to any particular person or persons, so it is not itself usurious. You haven’t done anything *intrinsically* wrong by opening the account.

I talk more about what bank accounts are and are not in [this post](#).

In fact even vacation loans or loans to buy groceries are [not necessarily usurious](#). It depends on whether the ‘loan’ in question is a *mutuum* (full recourse) or a *societas* (non recourse).

45) Is it morally licit to charge interest on a full recourse loan just to cover inflation?

No. The answer is implicit in [Question 35](#) — once you’ve grasped the difference between *mutuum* and *societas* it becomes clear that the price of the ‘currency’ most likely will fluctuate all over the place relative to other things, *whatever* is used as currency. The *mutuum* might be in wheat or oranges or even computers or cars as opposed to dollars; but that doesn’t change the nature of the contract.

So if it is an interest bearing *mutuum* it is usury, and the inflation rate (or price fluctuation between commodities or currencies generally) is irrelevant.

In effect what the “just-to-cover-inflation” usurer is attempting to do is enslave the borrower (as opposed to purchasing claims against some actually existing property) as an inflation hedge. All property is subject to entropy, decay, devaluation, theft, political unrest, changes in market conditions or personal circumstances, and other risks. It is fine generally speaking to make *investments* as a hedge against this, in an effort to preserve wealth; but it is not morally licit to make *usurious loans* as a hedge against this.

[Some folks have found this approach to the answer confusing, so I answered it again from a slightly different perspective in [Question 53](#)]

46) What about futures contracts? Are they usurious?

I could go on and talk about all sorts of different contracts and the practical implications. But the bottom line is that those contracts are generally fine as long as they are ultimately secured by recourse to some inventory of real assets and *only* that inventory of real assets – if they are non recourse. Just about any creative structure of contract is possible in theory — as long as real assets are posted as security and the parties agree that all recourse terminates in those real assets. (This doesn't mean that any and all creative non recourse contracts are morally licit by necessity: it just means that they are not specifically *usurious*. See [Question 11](#)).

I'll give a simple example of a non-usurious futures contract. (A real example might involve insurance bonds or the like as part of the arbitrage over the real assets tied up in the contract; but I'll try to make this as simple as it can be to describe it conceptually).

Suppose it is springtime, and Farmer Bob and Investor Bill disagree about whether wheat prices are going to go up or down. Bill thinks there will be a drought, and Bob thinks the harvest will be big. Given supply and demand, then, Bill expects high wheat prices in the fall and Bob expects low wheat prices.

So Bob and Bill enter into a non recourse contract under which Bill pays Bob 1000 groats now, and Bob agrees to deliver a ton of wheat to Bill on November 1st.

The contract is non recourse because Bob pledges the actual field on which he plans to grow the wheat as collateral, and Bill agrees that his recourse is limited to foreclosing on that field. In effect Bill now co-owns the field with Bob, and their mutual business interests – their *societas* – is limited to that field: a real asset distinct from persons. Now maybe Bob was right, or at least he successfully grew the wheat, and on November 1st he delivers a ton of wheat to Bill. But maybe Bill was so right that Bob wasn't able to grow the wheat. The drought destroyed Bob's crop. In that case Bill and Bob have agreed to foreclose, and Bob will have to sell the field in order to buy a ton of wheat to hand over to Bill.

However, because the contract is non recourse, that is the limit of Bill's recourse – as agreed by the parties from the beginning, *intrinsic* to their contract. If selling the field does not raise enough money to buy the now very expensive wheat, Bill only gets as much as the proceeds will actually buy. Furthermore, if selling the field itself raises only 800 groats, then Bill only recovers 800 groats — less than the principal amount of his initial investment. Bill's recourse – as they agreed from the outset – is bounded by the actual property pledged in the contract.

The bottom line, even if you don't follow the example, is that the prohibition of usury does not prohibit reasonable investment, including those that involve risking assets you actually own based on how you think things will develop in the market.

What the prohibition of usury forbids is *enslaving your fellow man* to your expectations, even when he is willing to be so enslaved: it forbids full recourse contracts for profit.

47) What is the evidence against Aquinas and in favor of the modern view that a reasonable amount of profit on a simple mutuum loan is morally licit?

There are three main pillars of evidence which are cited: **(a)** changes in Canon Law and pastoral practice; **(b)** the scholastic concept of “extrinsic titles” on loans more or

less approved (or explicitly-not-explicitly denied, more accurately) as a general notion (with no specific ones explicitly approved) by the Magisterium; and **(c)** Magisterial declaration that the specific practices of the “Mountains of Piety” – medieval credit agencies sponsored by the Church to help the poor by making low interest “loans” – were not usurious and in fact were praiseworthy.

a) The first pillar is changes in Canon Law and pastoral practice. As previously mentioned (Question [29](#)), prior to a declaration by the Holy Office ending the practice on August 31, 1831 it was frequently imposed that a usurer had to make an accounting of all the money he had made through usury and make restitution before he was given sacramental absolution. It was also frequently true that (as is the case now) confessors and laymen did not accurately grasp the usury doctrine; so businessmen who engaged in perfectly licit contracts and transactions were sometimes harassed, denied the sacraments, told to liquidate their estates, and denied Christian burial.

The intervention of the Holy See on the question, through the Holy Office and revision of Canon Law, basically asserted that as long as a penitent was prepared to follow instruction by the Holy See on the question of usury he should be granted absolution and generally left alone. This in effect removed the problem of understanding the nuts and bolts of usury from the purview of confessors (who were frequently financially naive themselves).

That this set of pastoral and legal changes could not even in principle modify doctrine is manifest.

b) The second pillar, extrinsic titles (mentioned briefly in Question [13](#) and Question [14](#)), are a subject which could – but really need not – take up a whole book in itself. The reason it could take up a lot of discussion is more historical than conceptual: the scholastics spent a good deal of time discussing and debating the subject. The concept of “extrinsic titles” is touched on briefly in *Vix Pervenit*, which explicitly does not explicitly deny the validity of the concept of extrinsic titles:

By these remarks, however, We do not deny that at times together with the loan contract certain other titles-which are not at all intrinsic to the contract-may run parallel with it. From these other titles, entirely just and legitimate reasons arise to demand something over and above the amount due on the contract.

As with just about anything there are a number of ways to interpret this conceptually, because the terms can be understood to mean various different and sometimes incompatible things. For example one way to think about a non recourse “loan” (and you will see some folks discuss it under this kind of framing) is to think of it as a mutuum together with an additional contract. This “add on” contract removes the personal pledge for repayment and replaces it with a pledge to transfer ownership of specific property if the borrower stops making payments: thus we get a non recourse loan. It is from this second, add-on contract, which grants the lender an ownership interest in the collateral and cancels the borrower’s personal obligation to repay, that a just title to profit arises.

However when the terminology is used that way – when the most essential property of a mutuum (Aquinas: “the borrower holds the money at his own risk and is bound to pay it all back”) is removed and replaced by a pledge of actually existing property which fully bounds and terminates the borrower’s obligation – it is editorially more clear to just recognize that what we have is an essentially different kind of contract.

These kinds of contracts in fact have their own names: a *census* (See Question [31](#)) or non recourse mortgage (see the [full citation](#) of “Usury and Contract for Rent” from *Regimini Universalis*), along with explicit approval by the Magisterium as non-usurious when non recourse.

The Magisterium (and Aquinas) make the distinction between full recourse and non recourse contracts central to usury in a number of authoritative proclamations (see Question [31](#) and Question [36](#)). It is not surprising then that using language which reflects that essential distinction is editorially clarifying, whereas language which ignores the distinction tends to muddy the waters; even in those cases where it can be interpreted in a manner which is technically correct.

That isn’t to suggest that just titles to something above the principal cannot arise in the case of a simple mutuum loan. The specific title of “damnum emergens”, or compensation for actual out-of-pocket lender’s costs or *actual damages* directly arising from making the loan, was accepted even by the usury hard-liner Aquinas. The conceptual approval (or non-disapproval) of extrinsic titles generally speaking, combined with explicit Magisterial approval of the specific practices of the “Mountains of Piety” (next up in part **(c)**), constitute the main progressive Catholic argument in favor of charging profitable interest on a simple mutuum loan.

It is worth pointing out again though that the Magisterium directly condemned charging interest on a mutuum to recover “opportunity cost” or “time value of money” (See Questions [14](#) and [15](#)). As we will see, when it comes to the third pillar of the progressive case the actual evidence in fact cuts *against* the idea that making a profit on a simple mutuum loan is ever morally licit for any reason whatsoever.

c) Question [13](#) touched on the third pillar generally and briefly. The so-called “Mountains of Piety” were an institutional development of efforts to provide credit to the poor to help them escape from dire situations, including usury and other exploitation by greedy lenders. These institutions sometimes loaned money for no fees or interest at all, but of course even a non profit institution has real expenses and someone has to come up with the cash to pay them. So interest was more often than not charged on these “micro credit” or “micro finance” loans to the poor. There was a tremendous clash over whether these particular institutions were or were not themselves guilty of usury. This conflict was settled by the Magisterium:

*With the approval of the holy Council (Lateran Council V), we declare and define that the aforesaid “Mountains of piety” established by the civil authorities and thus far approved and confirmed by the authority of the Apostolic See, in which a moderate rate of interest is received exclusively for the expenses of the officials and for other things pertaining to their keeping, as is set forth, for an indemnity of these as far as this matter is concerned, beyond the capital **without a profit for these same Mountains**, neither offer an species of evil, nor furnish an incentive to sin, nor in any way are condemned, nay rather that such a loan is worthwhile and is to be praised and approved, and least of all to be considered usury. – Leo X, Inter Multiplices, April 28, 1515 (quoted in Denzinger). (Emphasis mine)*

Probably the second thing to note, following the direct repudiation of making a profit in this declaration, is that it isn’t clear that the “loans” made by the Mountains were mutuum loans at all. I’ve been critical of the ambiguity and accuracy of the Catholic Encyclopedia on usury (Question [41](#)) because it omits entirely – perhaps its authors were simply ignorant of the requisite documents – the Magisterial distinction (also found in Aquinas) between full recourse and non recourse contracts (Question [31](#) and Question [36](#)); the article also claims that *Vix Pervenit* “formally condemns” institutional credit in the Church tied to Church property – which in fact it does not,

since the encyclical doesn't discuss mortgages on Church property at all – suggesting that the Church approves of interest on “loans” (as an ambiguous term) “in practice”. If the Catholic Encyclopedia [has the facts right](#) about the Mountains of Piety though then it is not clear that they made mutuum loans at all. The Mountains operated like modern day pawn shops, taking in existing property as security and making non recourse loans against the property:

The amount of a given loan was equal to two-thirds the value of the object pawned, which, if not redeemed within the stipulated time, was sold at public auction, and if the price obtained for it was greater than the loan with the interest, the surplus was made over to the owner.

Of course as explained in Question [11](#) of this document, just because a contract does not, in Benedict XIV's words, “fall under the precise rubric of usury” does not mean it is not exploitative and wrong. The Jewish and Lombard money lenders often required collateral also and charged outrageous amounts of interest. I don't know what loan-to-value ratios they maintained or if they would always assert deficiency judgments against borrowers, but keep in mind that just because a contract is not technically usury does not mean it is not exploitative and wrong. It is important to understand usury correctly; but too much focus on usury specifically could easily become a distraction from other real injustices.

And that is always something important to acknowledge: that even when a given contract does not “fall under the precise rubric of usury” (*Vix Pervenit*), “whatever is received over and above what is fair is a real injustice.” (*Ibid*)

48) What about the Fifth Lateran Council's definition?

The Fifth Lateran Council at one point defines usury [in this way](#):

[O]ur Lord, according to Luke the evangelist, has bound us by a clear command that we ought not to expect any addition to the capital sum when we grant a [mutuum] loan. For, that is the real meaning of usury: when, from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense or any risk.

This is perfectly consistent with usury as understood throughout this FAQ, in the other Magisterial statements cited (in fact the same council has already been cited in discussing the Mountains of Piety in [Question 47](#)), and in Aquinas' writing on the subject. In particular a *mutuum* loan, as Aquinas observes also, is a kind of contract in which the normal *risk associated with ownership* is born by the *borrower*. Profit *for the lender* from a *mutuum* loan is never morally licit: the borrower has in a literal sense become the owner of what has been lent, because he may do with it as he wills and any risk of loss is his.

Other kinds of contracts – contracts which are not *mutuum* loans, that is, which are non recourse contracts – may produce licit profits, even at a fixed rate of return, bounded by the pool of property in which the contract is a claim (see [Question 31](#)); as affirmed in a number of Magisterial statements cited throughout this FAQ. But those profits always come in association with the risks inherent in claims against property, without personal guarantees. If the property is lost to natural disaster, etc, and there is no pooling of designated property as insurance, etc, then the investment is lost: no other *person* is carrying the risk, so profit can be licit under the Fifth Lateran Council definition. The Fifth Lateran Council definition is not in conflict with *Vix Pervenit* and the other Magisterial documents cited here affirming the licitness of profit on legitimate *non recourse* investments.

Confusion often arises because modern people are in the habit of referring to fundamentally different kinds of contracts with the single word “loan.”

49) Is it acceptable for a merchant to charge penalties for late payment?

It is certainly morally acceptable for genuine victims of fraud or theft to be compensated for their actual losses. A buyer of products or services who is able to pay but refuses to pay when those products or services have been received has committed an act of theft or fraud. A buyer who is not able to pay but pretends to be able is likewise committing theft or fraud.

A trickier case is when a merchant extends credit and allows a buyer to pay later. If the 'buyer' is an institution and the security on commercial credit is the balance sheet of an institution, this is not a mutuum loan so the usury prohibition does not apply. If the buyer is an individual who is personally guaranteeing payment to the merchant, this *is* a mutuum loan and the prohibition of usury *does* apply. This gives rise to two possible cases. In one case the buyer is able to pay on time but refuses. In the other case the buyer has suffered some catastrophe and is unable to pay. The former is theft or fraud; the latter is business misfortune, a risk associated with doing business. If the merchant does not have proper security in place then he should absorb the loss until the buyer is able to pay, and should not insist on any penalty above the amount owed. If the merchant does not want to be exposed to those kinds of losses he can arrange for some kind of security (claims against specified property) or he can require payment on delivery instead of extending credit.

My own tentative view is that theft and fraud should generally involve criminal conviction and penalties of some sort, not merely compensation of the victim at the level of tort, because theft and fraud harm the common good not just the victim. One way they harm the common good is by opening the door to various kinds of 'hidden usury' — thief and 'victim' in collusion attempt to get around the prohibition of usury, by creating a situation in which the borrower 'defrauds' the lender, wink wink, so the borrower owes a penalty in addition to the principal. Collusion in faux-theft in order to produce penalties under the legal system – hidden usury – would simply make both parties guilty.

If this seems severe, consider that stealing a pack of gum is criminal theft, because stealing harms not just the victim but the common good. Categorizing it as criminal does not really say anything about the severity of the offense in a specific case; it merely acknowledges the harm to the common good in addition to the victim, or the defrauding of the sovereign by the parties in collusion. A discussion of crime versus tort is beyond the scope of the present FAQ, but it is sufficient to point out that 'hidden usury' in this kind of case involves (assuming a just legal system which declines to enforce usurious contracts) a conspiracy between borrower and lender to falsify an act of fraud so that the legal system will enforce a penalty.

50) John Noonan and other scholars have stated that we can't grasp the usury doctrine without getting into medieval just price theory. Yet you say that usury doctrine doesn't depend upon any economic theory or theory of just pricing. Why do some scholars say that there is a dependence between usury doctrine and medieval theory of just price? The way to figure out whether a [contract](#) for gain is usurious or not is to look for contract terms which treat a *personal guarantee* as if it were *property*. It is morally licit for an owner to profit from the use of his property, or of property against which he has claims. But a borrower's promise to repay principal [which has been consumed](#) is not property. [A mere promise of apples is not itself actually apples](#). And the historical fact

that there used to exist some apples which were consumed or money which was spent is not — the historical fact is not — actual apples or money.

If a mere promise to repay in kind actually were property it could be alienated from the borrower and repossessed by the lender, in case the borrower stopped making payments. Charging rent or levying profits from a mere promise to repay – charging “rent” for “property” which does not exist independent of any particular person – is usury. The fact that what is owed under a *mutuum* cannot be recovered from reality, but must *by definition* be recovered from a person, demonstrates that it *does not exist* in the [pertinent sense required to justify rents or profits](#).

I’ve said in a number of places (because it is true) that moral doctrine condemning usury does not depend upon any broader economic theory or theory of just pricing, and is in fact compatible with many such theories. On the other hand it is true that usurers would often take advantage of price ambiguities in order to charge what the medievals called “hidden usury”. It is from this that the myth of interdependence between usury doctrine and medieval just price theory arises. As seems to occur in many areas of moral theology, if people weren’t trying to get a pass on doing moral wrong on a technicality the issue would never arise in the first place.

Suppose I lend you 100 apples and agree to be repaid in two months time. But instead of asking for repayment in apples, I ask for you to personally guarantee ([ahem](#)) repayment of 100 oranges. Because oranges are worth more than apples when we ink our contract – and this is where just pricing may come into play – this contract involves “hidden usury”.

That this is “hidden usury” is clear once we [observe](#) that the terms call for contractual profit to the lender in conjunction with a personal guarantee by the borrower. Personally guaranteed loans (*mutuum* loans) are only ever morally licit as acts of charity or friendship. They are not morally licit as profit-producing investments, even when the lender [might have hypothetically made a profit in some other way](#) had he, counterfactually, chosen to do something different.

This does not in any way impair legitimate investment for gain. (It also [doesn’t give a free moral pass to every contract which is not, strictly speaking, usurious](#)). The way to avoid entering into usurious contracts (including those involving ‘hidden usury’) is to [avoid commercial contract terms calling for personal guarantees of repayment](#). The only reason ‘just pricing’ comes into play at all is because the parties are attempting to craft a de-facto usurious contract while avoiding usury on a technicality — on the ambiguity of the relative prices of apples and oranges. This would not be an issue at all if the contracts were nonrecourse, that is, if the contract were not a form of *mutuum*. But *mutuum* agreements are never morally licit for gain in the first place. The notion that they are or should be is rooted, as with many errors of the modern age, in metaphysical anti-realism.

For further reading I discuss the structure of (for example) morally licit [business debt \(like corporate bonds\)](#), [futures contracts](#), [rental agreements](#), and [insurance bonds](#) elsewhere in this FAQ.

I’ll leave you with this quote from St. Francis Xavier, giving counsel to confessors (emphasis mine):

‘When in the sacred tribunal of penance you have heard all that your penitents have prepared themselves to confess of their sins, do not at once think that all is done, and that you have no further duty to discharge. You must go on further to inquire, and by means of questions to rake out the faults which ought to be known and to be remedied, but which escape the penitents themselves on account of their ignorance.

*Ask them what profits they make, how, and whence? what is the system that they follow in barter, in loans, and in **the whole matter of security for contracts?** You will generally find that everything is defiled with usurious contracts, ...'*

51) Isn't it usury or something related to usury when banks 'create money' in a system of fractional reserve lending?

The way the question is posed gets the relationship backwards. When banks make non recourse loans they are securitizing property. It is only when they make *usurious* loans that they create 'money' out of literally nothing (that is, nothing but the personal promises of borrowers to repay). I explain this in more detail in [this blog post](#).

52) I'm still struggling with the whole 'loan for consumption' thing. Why is it that a personal guarantee of repayment is equivalent to a loan for consumption?

In a *mutuum*, or a more complex contract which includes a *mutuum* such as a home mortgage which allows for a deficiency judgment against the borrower, the borrower's obligation to repay remains even if the proceeds and all of the things purchased with the proceeds are *consumed*. We tend to think of 'loan for consumption' as referring to what kind of thing is lent or what is done with the proceeds, as opposed to what the contract authorizes and requires. But the distinction between a *mutuum* and other contracts is not in the kind of property which is exchanged or in what the borrower does with the property; it is in the *nature of the agreement itself*.

A *mutuum* contemplates and provides for consumption or alienation of the property which is lent in return for a personal IOU. Here is Aquinas again:

*As the Philosopher says in the Politics, things can have two uses: one specific and primary; the other general and secondary. For example, the specific and primary use of shoes is to wear them, and their secondary use is to exchange them for something else. And conversely, the specific and primary use of money is as a means of exchange, since money was instituted for this purpose, and the secondary use of money can be for anything else, for example, as security or for display. And **exchange is a use consuming, as it were, the substance of the thing exchanged insofar as the exchange alienates the thing from the one who exchanges it**. And so if persons should lend their money to others **for use as a means of exchange**, which is the specific use of money, and seek a return for this use over and above the principal, this will be contrary to justice. But if persons lend their money to others **for another use in which the money is not consumed**, there will be the same consideration as regarding the things that are not consumed in their very use, things that are licitly rented and hired out. **And so if one gives money sealed in a purse to post it as security and then receives recompense, this is not interest-taking, since it involves renting or hiring out, not a contract for a loan**. And the reasoning is the same if a person gives money to another to use it for display, just as, conversely, **if one gives shoes to another as a means of exchange and on that account were to seek a recompense over and above the value of the shoes, there would be interest-taking**.*

— St. Thomas Aquinas, *De Malo*, Oxford University Press, translated by Brian Davies and Richard Regan. (Emphasis mine)

53) Why doesn't the *mutuum* borrower owe at least enough interest to compensate for inflation?

Lets assume for the sake of argument that charging interest based on counterfactuals (opportunity cost) is morally licit, even though it isn't: that *mutuum* lending for interest is justifiable based on counterfactual storytelling about things that might or might not have happened if different choices were made.

It is often said that money now is worth more than money later, and a common argument is that this justifies charging interest on mutuum loans: at least enough interest to compensate for the effects of inflation or currency devaluation.

As is typical of modern anti-realist views of property (see [Question 10](#) for a realist view), this gets things almost exactly backwards. In fact if the argument from counterfactuals or opportunity cost were valid in the first place, what would follow is that the lender should pay interest to the borrower.

Property *in itself* is always subject to decay. Suppose you lend me fresh peaches, and I personally guarantee to give you the same number of fresh peaches six months from now.

In order to provide you with fresh peaches six months from now I have to take risks and invest more capital and labor. If I just hang on to your peaches and return them to you they will be rotten, because the peaches you lent to me are subject to decay. *You* should pay *me* interest, since when I give you fresh peaches in six months you are getting a greater value back than what you gave. I personally guaranteed you fresh peaches in six months, and took all of the risk and labor of providing them upon myself. (Note: [Question 46](#) provides a description of a non-usurious futures contract, that is, a futures contract for profit which is not based on a mutuum loan).

Guaranteed fresh peaches later requires investment, labor, and risk. ([Question 48](#) is pertinent). Peaches in a bucket right now require none of those things. If any interest based on counterfactuals is justifiable at all it should go to the party who takes on the task and the risk of providing fresh peaches in six months: the borrower.

And the same is true of money, or any property. (Matthew 6:19 – “Lay not up to yourselves treasures on earth: where the rust, and moth consume, and where thieves break through and steal.”) If entropy or decay (for example inflation) justifies charging interest on a mutuum loan at all, the interest it justifies is due to the borrower not the lender; because the borrower is the person who has taken on all of the risk and expense of preserving the lender’s capital.

The borrower should be compensated for the expenses the lender would have incurred if the lender had kept his capital locked (for a fee) in a safe deposit box rather than giving it to the borrower for preservation and safekeeping. If the borrower is providing a service roughly equivalent to a safe deposit box, interest should flow the opposite direction from what the usurer proposes. Safe deposit boxes have to be rented for a reason.

The fallacy in all of this is in the notion that opportunity costs are compensable in mutuum lending in the first place (see [Question 14](#)), and the idea that mutuum lending is ever morally licit as a means to economic gain – where wealth preservation is a kind of gain – as opposed to an act of charity or friendship.

But once we grant the premise that opportunity costs are compensable for the sake of argument, the lender should be paying interest to the borrower. The borrower’s story about counterfactual might-have-beens is more in touch with reality than the lender’s story about counterfactual might-have-beens, because preserving and maintaining property against the forces of entropy always requires risk, work, and investment.

54) Are you suggesting that simply preserving the economic buying power of some property is a kind of gain?

Yes.

Modern man is so acclimated to usury that when it comes to wealth, he has convinced himself that the second law of thermodynamics runs backwards. Back here in the real world though property and its buying power deteriorate unless the owner does work himself, invests more property to protect what he has, and/or takes risks with his property in putting it to work as productive capital.

Even the most durable property – a cache of precious metals, say – requires some investment of work, risk, and additional property in order to merely preserve it. To bury a pot of gold takes work. To acquire or rent the land on which it is buried absorbs additional resources, as does protecting that land from prospecting trespassers and thieves. To bury it on someone else's land which is not owned, rented, or otherwise protected through ongoing expenditure of work or capital is to take a more significant risk. You have to keep track of where it is, make sure that thieves don't find out where it is, and be ready to retrieve it or just lose it if someone else finds it.

Even when a non recourse insurance bond ([Question 18](#)) covering the loss of the property is purchased, this does not eliminate risk: it simply spreads the risk over a larger pool of property, compensating the insurer for renting his property to the insured as security, thereby putting it at risk. If the insurer's overall losses on all claims are too great then the property he has staked to insure your property will not pay your claim: the well is only so deep. And of course you have to pay for the insurance bond.

It is a commonplace among investment advisors that a wealth preservation strategy involves investing a portfolio in such a way as to maximize the chances that it will preserve its buying power: to take the smallest risk possible with respect to losing buying power. You cannot even preserve the buying power of your property without investing: without doing work, employing your capital in some inherently risky enterprise, and/or taking on other risks. (Other investment strategies include aggressive growth with high risk, and various intermediate strategies in between). Portfolios of property – that is to say, the collection of all of the property that a person owns – do not preserve themselves. Just staying even takes work, investment, and risk. If you don't swim, you are going to drown. That is the nature of life in the universe in which we live.

One way to understand usury is as the unjust compensation of the lender for work, risk, and investment undertaken by the borrower; because in a mutuum loan the borrower *personally* pledges to make the lender whole, restoring property equivalent to what was originally given to the borrower, no matter what actually happens to the *actual* property borrowed. This is why interest on mutuum loans is intrinsically unjust, and mutuum loans may only be licitly undertaken as a favor to a friend or a person in need, expecting no compensation in return.

55) If you make a mutuum loan to a friend in need, shouldn't that friend try to keep you from losing any economic buying power in the process?

Suppose your best friend needs wheat and can't afford to buy any. He doesn't need paper: he needs wheat. You've got some excess wheat you could lend him, but you like the way paper futures ([Question 46](#)) look better, and you want a guarantee that you won't lose any buying power ([Question 54](#)) when you are doing your best friend a favor.

So you lend him paper (even though he needs wheat, and is just going to exchange the paper for wheat) just so that, as a formality, the kind of thing he owes you back

([Question 35](#)) is paper. Or you tell him that you know he needs wheat and you have plenty to lend, but you like paper futures better so even though you'll give him wheat you want him to repay the wheat you gave him by doing imaginary wheat-to-paper exchanges (they will be imaginary to avoid transaction fees and taxes) at the point of borrowing and repayment. Because of the excursion into the land of imaginary paper he ends up owing you back more wheat than you lent him on this mutuum loan – usury.

It seems to me that your friendship is as imaginary as the wheat-to-paper exchanges. That is no way to treat a friend in need. The former contract might not be technically usury, while the latter definitely *is* usury. But this fails to undermine the moral doctrine prohibiting usury, much as the fact that flirting heavily with your secretary is not technically adultery fails to undermine the moral doctrine prohibiting adultery.

And mutuum lending is only morally licit as an act of friendship or charity. It is not morally licit in pursuit of gain. Preservation of market buying power as something guaranteed by someone else is a kind of gain ([Question 54](#)).

If your best friend decides to pay you back more wheat than you loaned him out of gratitude, that is a gift from him to you. There isn't anything wrong with that. It is even true that he *owes* you gratitude in a sense. But gratitude between friends is not convertible into a specific dollar amount which he can be said to owe you as a financial matter. No true friend is going to quibble, in dollar terms, as to whether his best friend has been grateful enough in the natural exchange of favors which occurs among friends.

It is possible for friends to do each other injustice in mutuum lending ([Question 49](#)); even to have a falling out and to no longer be friends. Suppose you lent your best friend the wheat, he now has enough to repay you the amount that he borrowed, but he refuses to do so. In that case *he* is not being a good friend; and he really does owe you back the amount of wheat that he borrowed, as a matter of justice. His refusal to pay it back now that he can is a kind of theft or fraud. You truly are entitled to return of the principal amount, and the falling out of your friendship does not remove that entitlement in justice.

A lender of money by reason of making a loan can in two ways expect a recompense from a borrower, whether in money or praise or service. A lender of money can expect a recompense from a borrower in one way as if the recompense is a debt by reason of a tacit or express obligation. And then the lender illicitly expects any such recompense. A lender of money can expect a recompense from a borrower in a second way as if the recompense is gratuitous and offered without obligation, not as if a debt. And then the lender can licitly expect a recompense from the borrower, as one who does a service for another trusts that the other will in the spirit of friendship return the favor.

[...]

A lender can in two ways incur the loss of something already possessed. The lender incurs loss in one way because the borrower does not return the [amount of] money lent at the specified date, and then the borrower is obliged to pay compensation. The lender incurs loss in a second way when the borrower returns the [amount of] money lent within the specified time, and then the borrower is not obliged to pay compensation, since the lender ought to have taken precautions against loss to self, and the borrower ought not incur loss regarding the lender's stupidity.

— *St. Thomas Aquinas, De Malo, Oxford University Press, translated by Brian Davies and Richard Regan.*

None of this makes *mutuum* lending morally licit as a wealth preservation investment strategy. There are plenty of ways to look after your own property financially: many different kinds of contracts for preserving and growing wealth are morally permissible.

But the security on those contracts must be *property*, not *personal IOU's*. Otherwise you are unjustly profiting financially from arbitrage over friendship.

56) Isn't criticism of usury just veiled anti-semitism?

That certain vices have become culturally associated with certain ethnic groups doesn't turn vice into virtue. The fact that the Irish are (fairly or unfairly) associated with drunkenness doesn't make sobriety a vice or turn drunkenness into a virtue, nor does it mean that any criticism of drunkenness is anti-Irish. The rhetoric of guilt by association may produce colorful emotions and conversations, but it probably obscures more than it reveals.

Several things may be noteworthy though, at least in terms of characterizing the association and the guilt — to the best of my knowledge, and with all the usual caveats, this being well outside the domain of what I consider substantively pertinent to the basic moral question.

First, the fact that diaspora Jews in Christian lands gravitated toward usury as a profession is as much Christians' fault as Jews' fault. The attitude was that Jews were heathens and were going to Hell anyway, so the Christian sovereign's law actually treated Jews more leniently than it treated Christians. Christians were prohibited from engaging in usury for the sake of their own souls; but Jews were damned anyway so why not let them do what they want? A libertine approach to the laws that applied to Jews was really a form of [cruelty](#) or at best indifference toward them, as is true of libertine legalism in general. Libertine legalism inherently expresses indifference about the good of persons subject to the law, and has had the detrimental effect of encouraging the growth of anti-Christian forces within Christian society over the long term.

Second, the situation illustrates the [lie built into 'libertine' law](#) in the first place, that is, the incoherence of the notion of the sovereign 'leaving people alone' to make whatever sorts of contracts they want to make. Without the Christian sovereign's enforcement, usurious contracts would have no teeth. To the extent that the Christian sovereign enforced usurious contracts he formally cooperated with them: you can't *enforce* contract terms without *intending* them. So professional usury on the part of Jews was really a partnership between Jews and their Christian enforcers. James I of Aragon (for example) couldn't pass and enforce laws collecting up to 20% usury on behalf of Jewish moneylenders without *intending* the usurious lending in question. Law and law enforcement which "allow" people to sell themselves into slavery is not the passive thing that the question-begging term "allow" suggests.

Third, there were in fact significant non-Jewish tribes or dynasties associated with professional usury, notably the Lombards. As is the case in many high IQ professions Jews were doubtless overrepresented in part simply because, as a group, they have greater intelligence than most of the rest of the bell curve. But it isn't as if Jews had a monopoly on the particular sin in question.

Certainly in the present age usury is not a “Jewish” thing. Usury is an “everyone” thing, so pervasive that most people have no idea what it even means. Usury is so prevalent that it has vanished into the background and become like the air we breathe. This has moral, practical, and economic consequences; and whatever one thinks of the historical, political, and moral situation it is worth actually *understanding* the subject before *making judgments* about it.

57) This all sounds so complicated, and use of the terms “loan” and “interest” to mean so many different things is confusing. Is there a straightforward way to tell if a simple loan for interest is usury?

In order to determine if a simple “loan for interest” is usurious, we need to ask the following:

1. Is profitable interest charged on the loan?
2. Has the borrower posted collateral providing security on the loan? (Note: a corporation or partnership counts as collateral).
3. Is the lender’s recourse for recovery of principal and interest, in a case of default, limited to the named collateral and only the named collateral?

If all three of these are true (as agreed by the contract parties), it is not usury.

If (1) is true and either (2) or (3) are false, it is usury.

58) Is there something that the government can do about usury without creating a whole bunch of complicated regulations?

Certainly. [One straw proposal](#) for a Constitutional amendment to effectively outlaw usury in the United States required eleven words:

“No government or arbiter shall enforce deficiency judgements in any contract.”

Like all verbal statements this is subject to interpretation, and various potential interpretive loopholes could be made less plausible using a few more words. For example the following is a bit more precise:

“No government or arbiter shall enforce non-criminal deficiency judgements against individuals in any contract.”

People will always try to find ways around the law, of course. Gangs and mobsters for example illegally enforce their own extralegal agreements. But without government endorsement and enforcement usury would be much less pervasive.

1. As with just about any term, “non recourse” can be interpreted a number of ways, generally as a cluster of related but sometimes incompatible meanings. I am not attempting here to make my usage conform to some particular legal jurisdiction or what have you – that is entirely irrelevant to understanding what usury *is and is not*. The way it is used throughout this FAQ is that in a non recourse contract it is *not* a violation of the contract terms for the ‘borrower’ to stop making payments on the loan, leaving the ‘lender’ to recover whatever he is entitled to recover from the collateral and the collateral alone. The ‘borrower’ has not violated the terms of the contract in this case, by definition: the agreement was that if the borrower stops paying, he is quit of all obligation under the contract. The lender gets to foreclose on the collateral to recover his entitlements and costs, and the lender’s recourse is to the collateral alone. If the collateral is worth more than the loan balance and any actual costs then the excess is due back to the borrower.

If the contract terms say that it is a *violation* of the contract for the borrower to stop paying and turn the collateral over to the lender, then the loan is a *mutuum* and any interest charged is usury. The lender may be limited to recovering his principal and

interest from the collateral *legally*, but the borrower is understood to have *violated the terms*. This is not a ‘non recourse’ loan the way the term is used throughout this FAQ, though other people in other places may refer to this understanding as ‘non recourse’. In short, there are (at least) two ways of understanding recourse. In the first way recourse refers to what the various parties to the contract are entitled to in the scenarios covered by the contract. It answers questions like “who gets what if the borrower stops making payments”, as a matter of what the *agreement between the parties itself* requires. In the second way, recourse refers to legal remedies under the positive law when someone *breaks* the agreement. “Recourse” in this second sense is not a part of what is agreed by the parties in the contract itself. This FAQ uses the term ‘recourse’ in the first sense, to refer to the terms of the contract itself. This understanding comes from the [Magisterium of the Church](#), not from any modern financial theory or practice. “Non recourse loan” just happens to be the closest term in common use these days capable of carrying the concept, and we are looking at the *intrinsic nature of different kinds of contracts* in order to understand usury. As a practical matter, the fact that the borrower is entitled under the contract terms to ‘walk away’ means that it is in the lender’s best interests to make sure that the value of the collateral significantly exceeds the amount loaned. The lender – on this understanding of a non recourse loan – is taking a property interest in the collateral, and if the value of that property drops below the loan balance the borrower is perfectly within his rights, under the terms of the contract, to walk away and leave the lender holding the property.

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Institutes of Justinian: Of Real Contracts (Mutuum)

Source: [The Institutes of Justinian \(gutenberg.org\)](http://www.gutenberg.org)

BOOK III. TITLE XIV. OF REAL CONTRACTS, OR THE MODES IN WHICH OBLIGATIONS ARE CONTRACTED BY DELIVERY

Real contracts, or contracts concluded by delivery, are exemplified by loan for consumption, that is to say, loan of such things as are estimated by weight, number, or measure, for instance, wine, oil, corn, coined money, copper, silver, or gold: things in which we transfer our property on condition that the receiver shall transfer to us, at a future time, not the same things, but other things of the same kind and quality: and this contract is called mutuum, because thereby meum or mine becomes tuum or thine. The action to which it gives rise is called a condictio.

1 Again, a man is bound by a real obligation if he takes what is not owed him from another who pays him by mistake; and the latter can, as plaintiff, bring a condictio against him for its recovery, after the analogy of the action whose formula ran 'if it be proved that he ought to convey,' exactly as if the defendant had received a loan from him. Consequently a pupil who, by mistake, is paid something which is not really owed him without his guardian's authority, will no more be bound by a condictio for the recovery of money not owed than by one for money received as a loan: though this kind of liability does not seem to be founded on contract; for a payment made in order to discharge a debt is intended to extinguish, not to create, an obligation.

2 So too a person to whom a thing is lent for use is laid under a real obligation, and is liable to the action on a loan for use. The difference between this case and a loan for consumption is considerable, for here the intention is not to make the object lent the property of the borrower, who accordingly is bound to restore the same identical thing. Again, if the receiver of a loan for consumption loses what he has received by some accident, such as fire, the fall of a building, shipwreck, or the attack of thieves or enemies, he still remains bound: but the borrower for use, though responsible for the greatest care in keeping what is lent him—and it is not enough that he has shown as much care as he usually bestows on his own affairs, if only some one else could have been more diligent in the charge of it—has not to answer for loss occasioned by fire or

accident beyond his control, provided it did not occur through any fault of his own. Otherwise, of course, it is different: for instance, if you choose to take with you on a journey a thing which has been lent to you for use, and lose it by being attacked by enemies or thieves, or by a shipwreck, it is beyond question that you will be liable for its restoration. A thing is not properly said to be lent for use if any recompense is received or agreed upon for the service; for where this is the case, the use of the thing is held to be hired, and the contract is of a different kind, for a loan for use ought always to be gratuitous.

3 Again, the obligation incurred by a person with whom a thing is deposited for custody is real, and he can be sued by the action of the deposit; he too being responsible for the restoration of the identical thing deposited, though only where it is lost through some positive act of commission on his part: for for carelessness, that is to say, inattention and negligence, he is not liable. Thus a person from whom a thing is stolen, in the charge of which he has been most careless, cannot be called to account, because, if a man entrusts property to the custody of a careless friend, he has no one to blame but himself for his want of caution.

4 Finally, the creditor who takes a thing in pledge is under a real obligation, and is bound to restore the thing itself by the action of pledge. A pledge, however, is for the benefit of both parties; of the debtor, because it enables him to borrow more easily, and of the creditor, because he has the better security for repayment; and accordingly, it is a settled rule that the pledgee cannot be held responsible for more than the greatest care in the custody of the pledge; if he shows this, and still loses it by some accident, he himself is freed from all liability, without losing his right to sue for the debt.

Institutes of Justinian: Of Usufruct

Source: [The Institutes of Justinian \(gutenberg.org\)](http://www.gutenberg.org)

BOOK II. TITLE IV. OF USUFRUCT

Usufruct is the right of using and taking the fruits of property not one's own, without impairing the substance of that property; for being a right over a corporeal thing, it is necessarily extinguished itself along with the extinction of the latter.

1 Usufruct is thus a right detached from the aggregate of rights involved in ownership, and this separation can be effected in very many ways: for instance, if one man gives another a usufruct by legacy, the legatee has the usufruct, while the heir has merely the bare ownership; and, conversely, if a man gives a legacy of an estate, reserving the usufruct, the usufruct belongs to the heir, while only the bare ownership is vested in the legatee. Similarly, he can give to one man a legacy of the usufruct, to another one of the estate, subject to the other's usufruct. If it is wished to create a usufruct in favour of another person otherwise than by testament, the proper mode is agreement followed by stipulation. However, lest ownership should be entirely valueless through the permanent separation from it of the usufruct, certain modes have been approved in which usufruct may be extinguished, and thereby revert to the owner.

2 A usufruct may be created not only in land or buildings, but also in slaves, cattle, and other objects generally, except such as are actually consumed by being used, of which a genuine usufruct is impossible by both natural and civil law. Among them are wine, oil, grain, clothing, and perhaps we may also say coined money; for a sum of money is in a sense extinguished by changing hands, as it constantly does in simply being used. For convenience sake, however, the senate enacted that a usufruct could be created in such things, provided that due security be given to the heir. Thus if a usufruct of money be given by legacy, that money, on being delivered to the legatee, becomes his property, though he has to give security to the heir that he will repay an equivalent sum on his dying or undergoing a loss of status. And all things of this class, when delivered to the legatee, become his property, though they are first appraised, and the legatee then gives security that if he dies or undergoes a loss of status he will pay the value which was put upon them. Thus in point of fact the senate did not introduce a usufruct of such things, for that was beyond its power, but established a right analogous to usufruct by requiring security.

3 Usufruct determines by the death of the usufructuary, by his undergoing either of the greater kinds of loss of status, by its improper exercise, and by its nonexercise during the time fixed by law; all of which points are settled by our constitution. It is also extinguished when surrendered to the owner by the usufructuary (though transfer to a third person is inoperative); and again, conversely, by the fructuary becoming owner of the thing, this being called consolidation. Obviously, a usufruct of a house is extinguished by the house being burnt down, or falling through an earthquake or faulty construction; and in such case a usufruct of the site cannot be claimed.

4 When a usufruct determines, it reverts to and is reunited with the ownership; and from that moment he who before was but bare owner of the thing begins to have full power over it.

Exodus 22

Exodus 22:25

25. If thou lend money to any of my people that is poor, that dwelleth with thee, thou shalt not be hard upon them as an extortioner, nor oppress them with usuries.

Haydock Commentary

Ver. 25. Poor. Such are often most in want. Usury is not lawful, even with respect to the rich. The Heb. terms it a bite. M. — "What is usury, said Cato, but to kill a man." The Romans required thieves to restore double, but usurers were to render four times as much as they had taken. Varro Rustic. i. — Restitution is prescribed, 2 Esd. v. 11. Some Calvinists have stood up in its defence, in opposition to the Scriptures, fathers, and Councils of the Catholic Church. Lend, hoping to gain nothing by it. Lu. vi. 35. "Let him who loves money,...lend (in the persons of the poor) to Him who says, Give, and it shall be given to you." S. Leo ser. The Jews themselves have reprobated usury in any use. C.

Lapide Commentary

25. Si pecuniam mutuam dederis populo meo pauperi qui habitat tecum, non urgebis eum quasi exactor, nec usuris opprimes, – Hebr. non eris ei ut exactor, vel

faenerator, et non pones super eum morsum, *id est usuram: Hebraei enim usuram vocant nesech, id est morsum, quia usura magis quam canis mordet et rodit pauperes.*
Edit:

5/3/2019: Added Lapide Latin commentary.

Leviticus 25

[Leviticus 25:35-37](#)

35. If thy brother be impoverished, and weak of hand, and thou receive him as a stranger and sojourner, and he live with thee, 36. Take not usury of him nor more than thou gavest: fear thy God, that thy brother may live with thee. 37. Thou shalt not give him thy money upon usury, nor exact of him any increase of fruits.

[Haydock Commentary](#)

Ver. 35. And thou. Heb. "thou shalt receive him: and of the stranger...(36) take no usury." There are two precepts; to relieve those in distress, and not to injury any one. C.

Deuteronomy 23

[Deut. 23: 19-20](#)

19. Thou shalt not lend to thy brother money to usury, nor corn, nor any other thing: 20. But to the stranger. To thy brother thou shalt lend that which he wanteth, without usury: that the Lord thy God may bless thee in all thy works in the land, which thou shalt go in to possess.

[Haydock Commentary](#)

Ver. 20. To the stranger. This was a dispensation granted by God to his people, who, being the Lord of all things, can give a right and title to one upon the goods of another. Otherwise the Scripture every where condemns usury as contrary to the law of God, and a crying sin. See Exod. xxii. 25. Lev. xxv. 36. 37. 2 Esd. v. 7. Ps. xiv. 5. Ezec. xviii. 8. 13, &c. Ch. — The stranger means the devoted nations of Chanaan, &c. whom God authorized his people to destroy. "Exact usury of him whom thou mayst kill without a crime," says S. Amb. (de Tob. c. 15,) though this principle will not always excuse usury. This practice was always considered as unjustifiable, except when God gave permission to his people to get by this means the possession of the property of the stranger, the right to which he had already given to them; unless we may consider, that he only tolerates this practice towards the stranger, on account of the hard-heartedness of the Jews. Christ has now expressly declared it unlawful for any one. See Ex. xxii. 25. C.

Psalms 14

[Psalm 14](#)

1. A psalm of David. Lord, who shall dwell in thy tabernacle? or who shall rest in thy holy hill? 2. He that walketh without blemish, and worketh justice: 3. He that speaketh truth in his heart, who hath not used deceit in his tongue: Nor hath done evil to his neighbour: nor taken up a reproach against his neighbours. 4. In his sight the

malignant is brought to nothing: but he glorifieth them that fear the Lord. He that sweareth to his neighbour, and deceiveth not; 5. He that hath not put out his money to usury, nor taken bribes against the innocent: He that doth these things shall not be moved for ever.

Haydock Commentary

Ver. 5. Usury. This was always blameable, though Moses tolerated it with respect to the Jews lending to the Chanaanites. Deut. xxiii. 19. Lu. vi. 35. The Roman law condemned the guilty to pay double as much as the thief, who was to restore twice the value of what he had stolen. Cato 1. — Under the semblance of kindness it does a real injury; (S. Hil.) etiam his invis quibus succurrere videtur. Columel. præf. C. — Bribes, (munera) “presents.” Even these are dangerous, as they tend to prepossess the judge. H. — Both usury and doing wrong for bribes exclude from heaven. W. — A judge must shake such things from his hands, (Isai. xxxiii. 15.) as he cannot take them to give either a just or a wrong sentence. His duty requires him to give the former; so that the innocent would thus be purchasing what was his own. C. — The same maxims must be applied to all in authority, (H.) to witnesses, &c. C. — Those who have not failed in any of these respects, must be possessed of faith, and all other necessary virtues, before they can enter heaven. For when the scripture attributes salvation to any one virtue in particular, it does not mean to exclude the rest. — For ever. All terrestrial things are mutable; and of course, the psalmist speaks of heaven. If so great perfection was required, to appear in the tabernacle, how much more must be expected of the candidate for heaven! W. — The good Christian who has not yielded to temptation, may there enjoy undisturbed repose. Isaias (xxiii. 15.) uses similar expressions, when describing the state of Jerusalem, after the defeat of Sennacherib. C.

Aquinas Commentary

The gloss explains this differently: In his sight, the wicked are brought to nothing, that is, the devil is conquered by him – John 2: You have conquered the wicked etc. The Lord glorifies those who fear the Lord, namely himself. However, the first explanation is the more literal one.

Here, he holds back so that he does not deceive his neighbour. One’s neighbour is deceived in three ways. First, in [promises], and this, through an oath; thus he says, He who swears an oath etc., that is, assents so as to deceive, because he does not comply – Zachariah 8: You do not love the deceitful oath; Leviticus 14: You will not swear falsely in the name of the your God, nor will you defile it. Swearing does not pertain to virtue, but rather to the keeping of an oath.

Secondly, in agreements. So, He who has not given his money to [usury] – Luke 6: Give a loan, hoping nothing in return: and do not accept bribes against the innocent; Proverbs 17: The wicked accept gifts from the bosom, that is, from the Church, to corrupt the path of the judge; Deuteronomy 23 forbids that it be given to a brother in usury, because he sells what does not exist, [because] he does not have usufruct (the right of enjoying the use and advantages of another’s property short of the destruction or waste of its substance).

Psalm 54

Psalm 54:10-16

10. Cast down, O Lord, and divide their tongues; for I have seen iniquity and contradiction in the city.

11. Day and night shall iniquity surround it upon its walls: and in the midst thereof are labour, 12. And injustice. And usury and deceit have not departed from its streets.

13. For if my enemy had reviled me, I would verily have borne with it. And if he that hated me had spoken great things against me, I would perhaps have hidden myself from him. 14. But thou a man of one mind, my guide, and my familiar, 15. Who didst take sweetmeats together with me: in the house of God we walked with consent.

16. Let death come upon them, and let them go down alive into hell. For there is wickedness in their dwellings: in the midst of them.

Haydock Commentary

Ver. 10. Cast down. Heb. "swallow up," as the earth did Dathan. C. — Sept. "drown." H. — Tongues, as at Babel, that they may not know how to proceed. C. — Heb. "swallow up...the torrent of their tongue." Bate. — Pallag, means also to "divide." Absalom was accordingly infatuated by David's friend. 2 K. xv. 31. and xvii. 7. M. — City of Hebron, or even of Jerusalem, which caused the king to leave no garrison in it. The city was still more abandoned in our Saviour's regard. C. — Contradiction. Their counsels agree not. They have their troubles, yet will not amend; but strive to oppress the poor. W.

Ver. 13. From him. But how shall we guard against a traitor? C. — The injury received from a friend is most cutting. W.

Aquinas Commentary

[Ver. 11-12] Day and night. Here he shows the wickedness of the multitude in a particular way. There are three things in any city one regards, namely the walls that enclose it, the central habitation, and streets.

And Aristotle distinguishes three kinds of people. By walls is understood the rulers and the magnates of the city that protect the people just as the walls protect the city. Proverbs 25: As a city that lieth open and is not compassed with walls etc.; Isaiah 62: Upon thy walls, O Jerusalem, I have appointed watchmen, namely, the rulers and leaders. Isaiah 1: Thy princes are faithless.

And Day, that is, in the execution of wickedness, Night, in planning it out. Or, Day, in the times of good fortune, and Night, in the times of adversity. Whence he says, Shall iniquity surround it upon its walls, that is the wickedness of the rulers will surround the city of the world, just like the walls of the city.

The middle of this city is the people In the midst thereof are labor, and injustice, to the same degree as of the wicked things they do; so when he speak of Labor imposed, he means the industry towards wickedness Jeremiah 9: They have labored to commit iniquity; Wisdom 5: We wearied ourselves in the way (of wickedness). And this [is a] species of evil, and injustice. And this is understood in a passive way to be about the injustice that they suffered from the prelates, and the labor imposed on them.

The streets are public places, and are those who exercise public office, just like businessmen in whom the injustice is manifest, for example, by usury. Psalm 14: He that hath not put out his money to usury. And therefore he says, And usury . . . have not departed. Likewise, hidden [injustice], so, And deceit.

Ezekiel 18

[Ezech. 18:4-9](#)

4. Behold all souls are mine: as the soul of the father, so also the soul of the son is mine: the soul that sinneth, the same shall die. 5. And if a man be just, and do judgment and justice,

6. And hath not eaten upon the mountains, nor lifted up his eyes to the idols of the house of Israel: and hath not defiled his neighbour's wife, nor come near to a menstruous woman: 7. And hath not wronged any man: but hath restored the pledge to the debtor, hath taken nothing away by violence: hath given his bread to the hungry, and hath covered the naked with a garment: 8. Hath not lent upon usury, nor taken any increase: hath withdrawn his hand from iniquity, and hath executed true judgment between man and man: 9. Hath walked in my commandments, and kept my judgments, to do truth: he is just, he shall surely live, saith the Lord God.

[Haydock Commentary](#)

Ver. 8. Increase more than what he lent, on any pretext. S. Jer. C.

Ezekiel 22

[Ezech. 22:6-15](#)

6. Behold the princes of Israel, every one hath employed his arm in thee to shed blood. 7. They have abused father and mother in thee, they have oppressed the stranger in the midst of thee, they have grieved the fatherless and widow in thee. 8. Thou hast despised my sanctuaries, and profaned my sabbaths. 9. Slanderers have been in thee to shed blood, and they have eaten upon the mountains in thee, they have committed wickedness in the midst of thee. 10. They have discovered the nakedness of their father in thee, they have humbled the uncleanness of the menstruous woman in thee.

11. And every one hath committed abomination with his neighbour's wife, and the father in law hath wickedly defiled his daughter in law, the brother hath oppressed his sister the daughter of his father in thee. 12. They have taken gifts in thee to shed blood: thou hast taken usury and increase, and hast covetously oppressed thy neighbours: and thou hast forgotten me, saith the Lord God. 13. Behold, I have clapped my hands at thy covetousness, which thou hast exercised : and at the blood that hath been shed in the midst of thee. 14. Shall thy heart endure, or shall thy hands prevail ill the days which I will bring upon thee: I the Lord have spoken, and will do it. 15. And I will disperse thee in the nations, and will scatter thee among the countries, and I will put an end to thy uncleanness in thee.

[Haydock Commentary](#)

Ver. 12. Increase. C. xviii. 18. C. — Me. "The remembrance of God excludes all sins." S. Jer.

2 Esdras (Nehemiah)

2 Esdras 5:1-11

1. Now there was a great cry of the people, and of their wives against their brethren the Jews. 2. And there were some that said: Our sons and our daughters are very many: Yet us take up corn for the price of them, and let us eat and live. 3. And there were some that said: Let us mortgage our lands, and our vineyards, and our houses, and let us take corn because of the famine. 4. And others said: Let us borrow money for the king's tribute, and let us give up our fields and vineyards: 5. And now our flesh is as the flesh of our brethren: and our children as their children. Behold we bring into bondage our sons and our daughters, and some of our daughters are bondwomen already, neither have we wherewith to redeem them, and our fields and our vineyards other men possess.

6. And I was exceedingly angry when I heard their cry according to these words. 7. And my heart thought with myself: and I rebuked the nobles and magistrates, and said to them: Do you every one exact usury of your brethren? And I gathered together a great assembly against them, 8. And I said to them: We, as you know, have redeemed according to our ability our brethren the Jews, that were sold to the Gentiles: and will you then sell your brethren, for us to redeem them? And they held their peace, and found not what to answer. 9. And I said to them: The thing you do is not good: why walk you not in the fear of our God, that we be not exposed to the reproaches of the Gentiles our enemies? 10. Both I and my brethren, and my servants, have lent money and corn to many: let us all agree not to call for it again; let us forgive the debt that is owing to us.

11. Restore ye to them this day their fields, and their vineyards, and their oliveyards, and their houses: and the hundredth part of the money, and of the corn, the wine, and the oil, which you mere wont to exact of them, give it rather for them.

Matthew 5

Matthew 5:42

Give to him that asketh of thee and from him that would borrow of thee turn not away.

Lapide Commentary

Give to him that asketh, &c. *At first sight the precept might not seem to be in harmony with what has gone before concerning the lex talionis, but it is indeed in perfect harmony. The meaning is this—I, Christ, instead of the law of retaliation, appoint a law of love and kindness. Wherefore, whosoever asketh anything of thee, be he friend or be he enemy who has injured thee, or smitten thee on the cheek, or taken away thy cloak, give him what he asks; and if he should desire to borrow from thee, turn not thy face away from him, as people are wont to do, but treat him kindly as a neighbour, and lend him that he requires, as though he had never injured thee.*

In fine, the sermon and sanction of Christ here does not decrease but increases, for although it may be easier per se to give to every one that asketh thee, than when thou art smitten upon one cheek to offer the other to the smiter, yet it is more difficult in the connection, which implies both the patience which suffers such things and such men, and the beneficence by which we give or lend to those who ask us. For it is more difficult to do a kindness to one who has injured us, than simply to bear an injury patiently. So S. Augustine, lib. de Serm. Dom., c. 40.

The liberality of S. John, Patriarch of Alexandria, is well known. Encouraged by these words of Christ, he gave large alms to all who asked him, whence he derived his name of the Almoner. And the more he gave the more he received, so that it seemed as though there were a strife between God and him who should be the more liberal. For John overcame God, but much more did God overcome John. John would not examine those who asked him, whether they were rich or poor, worthy or unworthy, few or many. "I am persuaded," he said, "that if the whole world should come to Alexandria, needing alms, they would be very far from exhausting the treasury of God." S. Francis, upon one occasion, shortly after his conversion, refused, contrary to his custom, to give an alms to a poor man. But he very soon afterwards repented of his refusal, and gave the man a large alms; and he made a vow that in future he would never refuse to give when he was asked. By this his liberality, he drew down upon him that abundant grace of God by which he attained to such eminent sanctity.

That is a rare thing which we read in the Chronicles of the Franciscans concerning Alexander Aleusis, who was called a fountain of life, and who was the teacher of S. Bonaventura. His affection for the Mother of God was so great that he would never deny anything to any one who asked him in her name. A certain Franciscan got to know of this, and, seeing that he was by far the most celebrated Doctor of the University of Paris, came to him and said, "By S. Mary, I beg of you to become one of us." He believed the man was sent by God, and immediately followed him, and became a Franciscan Brother.

Luke 6

Luke 6:35

35. But love ye your enemies: do good, and lend, hoping for nothing thereby: and your reward shall be great, and you shall be the sons of the Highest; for he is kind to the unthankful, and to the evil.

Haydock Commentary

Ver. 35. Hoping for nothing, but merely impelled by a desire of doing good. They who only give when sure of having a greater return, do not give, but traffic with their generosity; in which there is no charity. A.

Lapide Commentary

Ver. 35.—Lend, hoping for nothing again. "From men," adds the Syriac, "that you may receive your reward of God."

Nothing, i.e. no pledge or return of any kind. Christ would have us lend, not only without exacting usury for the loan, but also without expecting a similar kindness in return. For

what is it but self-seeking and avarice, if I lend to another that he in his turn may lend to me? Christ here enjoins the true benevolence which lends freely, content that at the appointed time the loan should be returned. Some, indeed, think that there should be no return, but the words of Christ do not bear this construction. For that which is lent without expectation of return, is given, not lent, and becomes not a loan but a gift. Toletus, Lessius, Valentia, and others.

Hence to seek to profit by a loan is contrary to the meaning of the word and the nature of the transaction. For the word mutuum (in the Greek δανείζετε, mutuum date, Vulgate), implies that they are mutuo animo, who give because of duty (Varro); or, as Verius Marcellus better explains it, mutuum means the same as meum tuum, because out of friendly feeling mine becomes thine for present needs and necessities. Hence S. Gregory Nyssen writes, "He who exacts interest on a loan, is condemned as a usurer;" for a loan is a friendly transaction, freely given and to be freely restored. Cicero, Epist. ad Metellum.

A kindly-hearted man, therefore, will lend to him who is in need, even though he may have reason to believe he will never be repaid, for there are many poor who cannot, and many unworthy persons who will not return that which is lent them.

Hence a witty writer, "If you lend to your friend and ask a return of the loan, you will lose either the one or the other;" and again, "By lending money, I have purchased to myself an enemy and lost a friend." He therefore who lends should lend for the love of God, who will richly repay, as is written, "He that hath pity on the poor lendeth unto the Lord." See Prov. xix. 17.

Hence S. Chrysostom: "The poor receive the gift, but God becomes the debtor;" and S. Basil (conc. 4 de Eleemosyna) "That which thou art about to give to the poor for the love of God, becomes both a gift and a loan,—a gift, because there is no expectation of return—a loan, because of the goodness of God, who will richly recompense in their name those who have relieved the necessities of the poor."

Wherefore we may take in a Christian sense that which is written: "Lose thy money for thy brother and thy friend." See Eccclus, xxix. 10, and my comments thereon. But when men take that which is lent, without a thought of returning it, no one is willing to become a lender.

Catena Aurea – Thomas Aquinas

CHRY. *The Lord had said that we must love our enemies, but that you might not think this an exaggerated expression, regarding it solely as spoken to alarm them, he adds the reason, saying, For if you love them which love you, what thank have you? There are indeed several causes which produce love; but spiritual love exceeds them all. For nothing earthly engenders it, neither gain, nor kindness, nor nature, nor time, but it descends from heaven. But why wonder that it needs not kindness to excite it, when it is not even overcome of malice? A father indeed suffering wrong bursts the bands of love. A wife after a quarrel leaves her husband A son, if he sees his father come to a great age, is troubled. But Paul went to those who stoned him to do them good. Moses is stoned by the Jews, and prays for them. Let us then reverence spiritual love, for it is indissoluble. Reproving therefore those who were inclined to wax cold, he adds, For sinners even love those which love them. As if he said, Because I wish you to possess more than these, I do*

not advise you only to love your friends, but also your enemies. It is common to all to do good to those who do good to them. But he shows that he seeks something more than is the custom of sinners, who do good to their friends. Hence it follows, And if you do good to those who do good to you, what thank have you?

BEDE; *But he not only condemns as unprofitable the love and kindness of sinners, but also the lending. As it follows, And if you lend to those from whom you hope to receive, what thank have you? for sinners also lend to sinners, to receive as much again.*

AMBROSE; *Now philosophy seems to divide justice into three parts; one towards God, which is called piety; another towards our parents, or the rest of mankind; a third to the dead, that the proper rites may be performed. But the Lord Jesus passing beyond the oracle of the law, and the heights of prophecy, extended the duties of piety to those also who have injured us, adding, But love your enemies.*

CHRY. *Whereby you will confer more upon yourself than him. For he is beloved by a fellow servant, but you are made like to God. But it is a mark of the greatest virtue when we embrace with kindness those who wish to do us harm. Hence it follows, And do good. For as water, when cast upon a lighted furnace, extinguishes it, so also reason joined with gentleness. But what water is to fire, such is lowliness and meekness to wrath; and as fire is not extinguished by fire, so neither is anger soothed by anger.*

GREG NYSS. *But man ought to shun that baneful anxiety with which he seeks from the poor man increase of his money and gold, exacting a profit of barren metals. Hence he adds, And lend, hoping for nothing again; &c. If a man should call the harsh calculation of interest, theft, or homicide, he will not err. For what is the difference, whether a man by digging under a wall become possessed of property, or possess it unlawfully by the compulsory rate of interest?*

BASIL; *Now this mode of avarice is rightly called in the Greek, from producing, because of the fruitfulness of the evil. Animals in course of time grow up and produce, but interest as soon as it is born begins to bring forth. Animals which bring forth most rapidly cease soonest from breeding, but the money of the avaricious goes on increasing with time. Animals when they transfer their bringing forth to their own young, themselves cease to breed, but the money of the covetous both produces an increase, and renews the capital. Touch not then the destructive monster. For what advantage that the poverty of today is escaped, if it falls upon us repeatedly, and is increased? Reflect then how can you restore yourself? Whence shall your money be so multiplied as that it will partly relieve your want, partly refresh your capital, , and besides bring forth interest? But you say, How shall I get my living? I answer, work, serve, last of all, beg; any thing is more tolerable than borrowing upon interest. But you say, what is that lending to which the hope of repayment is not attached? Consider the excellence of the words, and you wilt admire the mercifulness of the author. When you are about to give to a poor man from regard to divine charity, it is both a lending and a gift; a gift indeed, because no return is hoped for; lending, because of the beneficence of God, who restores it in its turn. Hence it follows, And great shall be your reward. Do you not wish the Almighty to be bound to restore to you? Or, should He make some rich citizen your security, do you accept him, but reject God standing as security for the poor?*

CHRYC. *Observe the wonderful nature of lending, one receives and another binds himself for his debts, giving a hundred fold at the present time, and in the future eternal life.*

AMBROSE; *How great the reward of mercy which is received into the privilege of divine adoption! For it follows, And you shall be the sons of the Highest. Follow then mercy, that you may obtain grace. Widely spread is the mercy of God; He pours His rain upon the unthankful, the fruitful earth refuses not its increase to the evil. Hence it follows, For he is kind to the unthankful, and to the evil.*

BEDE; *Either by giving them temporal gifts, or by inspiring His heavenly gifts with a wonderful grace.*

CYRIL; *Great then is the praise of mercy. For this virtue makes us like to God, and imprints upon our souls certain signs as it were of a heavenly nature. Hence it follows, Be you then merciful, as your heavenly Father also is merciful.*

ATHAN; *That is to say, that we beholding His mercies, what good things we do should do them not with regard to men, but to Him, that we may obtain our rewards from God, not from men.*

Augustine: Epistle 153 to Macedonius (Excerpt)

Source: [S. AURELII AUGUSTINI OPERA OMNIA: PATROLOGIAE LATINAE ELENCHUS](#)
Quid dicam de usuris, quas etiam ipsae leges et iudices reddi iubent? An crudelior est qui subtrahit aliquid vel eripit diviti, quam qui trucidat pauperem fenore? Haec atque huiusmodi male utique possidentur, et vellem restituerentur; sed non est quo iudice repetantur.

English Translation ([Usury, funds and banks](#) by Rev. Jeremiah O'Callaghan, page 90)

“What shall I say of usury recovered by the judges in the courts of Justice? Is rapine committed on the rich less cruel than the usury that is squeezed from the bowels of the poor? It is desirable that these, and all such ill-begotten goods, be restored to the owners.”

Augustine: Exposition on Psalm 37

Source: [St. Augustine: Exposition on the Book of Psalms \(Nicene and Post-Nicene Fathers Series\)](#)

“He is always merciful, and lendeth” ([ver. 26](#)). “Fœneratur” is used in Latin indeed, both for him who lendeth, and for him who borroweth. But in this passage the meaning is more plain, if we express it by “fœnerat.” What matters it to us, what the grammarians please to rule? It were better for us to be guilty of a barbarism, so that ye

understand, than that in our propriety of speech ye be left unprovided. Therefore, that "righteous man is all day merciful, and (foenerat) lendeth." Let not the lenders of money on usury, however, rejoice. For we find it is a particular kind of lender that is spoken of, as it was a particular kind of bread; that we may, in all passages, "remove the roof," and find our way to Christ. I would not have you be lenders of money on usury; and I would not have you be such for this reason, because God would not have you....Whence does it appear that God would not have it so? It is said in another place, "He that putteth not out his money to usury."⁹⁰⁷ And how detestable, odious, and execrable a thing it is, I believe that even usurers themselves know. Again, on the other hand, I myself, nay rather our God Himself bids thee be an usurer, and says to thee, "Lend unto God." If thou lendest to man, hast thou hope? and shalt thou not have hope, if thou lendest to God? If thou hast lent thy money on usury to man, that is, if thou hast given the loan of thy money to one, from whom thou dost expect to receive something more than thou hast given, not in money only, but anything, whether it be wheat, or wine, or oil, or whatever else you please, if you expect to receive more than you have given, you are an usurer, and in this particular are not deserving of praise, but of censure. "What then," you say, "am I to do, that I may 'lend' profitably?" Consider what the usurer does. He undoubtedly desires to give a less sum, and to receive a larger; do thou this also; give thou a little, receive much. See how thy principal grows, and increases! Give "things temporal," receive "things eternal:" give earth, receive heaven! And perhaps thou wouldest say, "To whom shall I give them?" The self-same Lord, who bade thee not lend on usury, comes forward as the Person to whom thou shouldest lend on usury! Hear from Scripture in what way thou mayest "lend unto the Lord." "He that hath pity on the poor, lendeth unto the Lord."⁹⁰⁸ For the Lord wanteth not aught of thee. But thou hast one who needs somewhat of thee: thou extendest it to him; he receives it. For the poor hath nothing to return to thee, and yet he would himself fain requite thee, and finds nothing wherewith to do it: all that remains in his power is the good-will that desires to pray for thee. Now when the poor man prays for thee, he, as it were, says unto God, "Lord, I have borrowed this; be Thou surety for me." Then, though you have no bond on the poor man to compel his repayment, yet you have on a sponisible security. See, God from His own Scriptures saith unto thee; "Give it, and fear not; I repay it. It is to Me thou givest it." In what way do those who make themselves sureties for others, express themselves? What is it that they say? "I repay it: I take it upon myself. It is to me you are giving it." Do we then suppose that God also says this, "I take it on Myself. It is unto me thou givest it"? Assuredly, if Christ be God, of which there is no doubt, He hath Himself said, "I was an hungred, and ye gave Me meat."⁹⁰⁹ And when they said unto Him, "When saw we Thee hungry?"⁹¹⁰ that He might show Himself to be the Surety for the poor, that He answers for all His members, that He is the Head, they the members, and that when the members receive, the Head receiveth also; He says, "Inasmuch as ye have done it to one of the least of these that belong to Me, ye have done it unto Me."⁹¹¹ Come, thou covetous usurer, consider what thou hast given; consider what thou art to receive. Hadst thou given a small sum of money, and he to whom thou hadst given it were to give thee for that small sum a great villa, worth incomparably more money than thou hadst given, how great thanks wouldest thou render, with how great joy wouldest thou be transported! Hear what possession He to whom thou hast been lending bestows. "Come, ye blessed of My Father, receive"⁹¹²—What? The same that they have given? God forbid! What you gave were earthly things, which, if you had not given them, would have become corrupted on earth. For what could you have made of them, if you had not given them? That which on earth would have been lost, has been preserved in heaven. Therefore what we ¹⁰⁰are to receive is that which hath been preserved. It is thy desert that hath been

preserved, thy desert hath been made thy treasure. For consider what it is that thou art to receive. Receive—"the kingdom prepared for you from the foundation of the world." On the other hand, what shall be their sentence, who would not "lend"? "Go ye into everlasting fire, prepared for the devil and his angels."⁹¹³ And what is the kingdom which we receive called? Consider what follows: "And these shall go into everlasting burning; but the righteous into life eternal."⁹¹⁴ Make interest for this; purchase this. Give your money on usury to earn this. You have Christ throned in heaven, begging on earth. We have discovered in what way the righteous lendeth. "He is alway merciful, and lendeth."

Commodianus (c. 250): They Who Give from Evil

Source: [Fathers of the Third Century: Tertullian, Part Fourth; Minucius Felix; Commodian; Origen, Parts First and Second \(Nicene and Post-Nicene Fathers Series\)](#)

Why dost thou senselessly feign thyself good by the wound of another? Whence thou bestowest, another is daily weeping. Dost not thou believe that the Lord sees those things from heaven? The Highest says, He does not prove of the gifts of the wicked. Thou shalt break forth upon the wretched when thou shalt have gained a place. One gives gifts that he may make another of no account; or if thou hast lent on usury, taking twenty-four per cent, thou wishest to bestow charity that thou mayest purge thyself, as being evil, with that which is evil. The Almighty absolutely rejects such works as these. Thou hast given *that which has been* wrung from tears; that candidate, oppressed with ungrateful usuries, and become needy, deplores it. Besides having obtained an opportunity for the exactors, thy enemy for the present is the people; thou consecrated, hast become wicked for reward. Also thou wishest to atone for thyself by the gain of wages. O wicked one, thou deceivest thyself, but none else.

Chrysostom (c. 349-407): Homily 5 on Matthew

Source: [St Chrysostom: Homilies on the Gospel of Saint Matthew \(Nicene and Post-Nicene Fathers Series\)](#)

Disperse therefore, that thou mayest not lose; keep not, that thou mayest keep; lay out, that thou mayest save; spend, that thou mayest gain. If thy treasures are to be hoarded, do not thou hoard them, for thou wilt surely cast them away; but entrust them to God, for thence no man makes spoil of them. Do not thou traffic, for thou knowest not at all how to gain; but lend unto Him who gives an interest greater than the principal. Lend, where is no envy, no accusation, nor evil design, nor fear. Lend unto Him who wants nothing, yet hath need for thy sake; who feeds all men, yet is an hungered, that thou mayest not suffer famine; who is poor, that thou mayest be rich. Lend there, where thy return cannot be death, but life instead of death. For this usury is the harbinger of a kingdom, that, of hell; the one coming of covetousness, the other of self-denial; the one of cruelty, the other of humanity. What excuse then will be ours, when having the power to receive more, and that with security, and in

due season, and in great freedom, without either reproaches, or fears, or dangers, we let go these gains, and follow after that other sort, base and vile as they are, insecure and perishable, and greatly aggravating the furnace for us? For nothing, nothing is baser than the usury of this world, nothing more cruel. Why, other persons' calamities are such a man's traffic; he makes himself gain of the distress of another, and demands wages for kindness, as though he were afraid to seem merciful, and under the cloak of kindness he digs the pitfall deeper, by the act of help galling a man's poverty, and in the act of stretching out the hand thrusting him down, and when receiving him as in harbor, involving him in shipwreck, as on a rock, or shoal, or reef.

"But what dost thou require?" saith one; "that I should give another for his use that money which I have got together, and which is to me useful, and demand no recompense?" Far from it: I say not this: yea, I earnestly desire that thou shouldest have a recompense; not however a mean nor small one, but far greater; for in return for gold, I would that thou shouldest receive Heaven for usury. Why then shut thyself up in poverty, crawling about the earth, and demanding little for great? Nay, this is the part of one who knows not how to be rich. For when God in return for a little money is promising thee [34](#)the good things that are in Heaven, and thou sayest, "Give me not Heaven, but instead of Heaven the gold that perisheth," this is for one who wishes to continue in poverty. Even as he surely who desires wealth and abundance will choose things abiding rather than things perishing; the inexhaustible, rather than such as waste away; much rather than little, the incorruptible rather than the corruptible. For so the other sort too will follow. For as he who seeks earth before Heaven, will surely lose earth also, so he that prefers Heaven to earth, shall enjoy both in great excellency. And that this may be the case with us, let us despise all things here, and choose the good things to come. For thus shall we obtain both the one and the other, by the grace and love towards man of our Lord Jesus Christ; to whom be glory and might for ever and ever. Amen.

Clement of Alexandria (c. 150-215): The Stromata Bk II Ch 18

Source: [Ante-Nicene Fathers Volume 2 \(Nicene and Post-Nicene Fathers Series\)](#)

Respecting imparting and communicating, though much might be said, let it suffice to remark that the law prohibits a brother from taking usury: designating as a brother not only him who is born of the same parents, but also one of the same race and sentiments, and a participator in the same word; deeming it right not to take usury for money, but with open hands and heart to bestow on those who need. For God, the author and the dispenser of such grace, takes as suitable usury the most precious things to be found among men—mildness, gentleness, magnanimity, reputation, renown. Do you not regard this command as marked by philanthropy?

Basil (c. 330-379): Homily on Psalm 14

Source: [Basil: Letters and Select Works \(Nicene and Post-Nicene Fathers Series\)](#)

“In depicting the character of the perfect man, of him, that is, who is ordained to ascend to the life of everlasting peace, the prophet reckons among his noble deeds his never having given his money upon usury. This particular sin is condemned in many passages of Scripture. Ezekiel⁴⁹⁵ reckons taking usury and increase among the greatest of crimes. The law distinctly utters the prohibition ‘Thou shalt not lend upon usury to thy brother’⁴⁹⁶ and to thy neighbour. Again it is said, ‘Usury upon usury; guile upon guile.’⁴⁹⁷ And of the city abounding in a multitude of wickednesses, what does the Psalm say? ‘Usury and guile depart not from her streets.’⁴⁹⁸ Now the prophet instances precisely the same point as characteristic of the perfect man, saying, ‘He that putteth not out his money to usury.’⁴⁹⁹ For in truth it is the last pitch of inhumanity that one man, in need of the bare necessities of life, should be compelled to borrow, and another, not satisfied with the principal, should seek to make gain and profit for himself out of the calamities of the poor. The Lord gave His own injunction quite plainly in the words, ‘from him that would borrow of thee turn not thou away.’⁵⁰⁰ But what of the money lover? He sees before him a man under stress of necessity bent to the ground in supplication. He sees him hesitating at no act, no words, of humiliation. He sees him suffering undeserved misfortune, but he is merciless. He does not reckon that he is a fellow-creature. He does not give in to his entreaties. He stands stiff and sour. He is moved by no prayers; his resolution is broken by no tears. He persists in refusal, invoking curses on his own head if he has any money about him, and swearing that he is himself on the lookout for a friend to furnish him a loan. He backs lies with oaths, and makes a poor addition to his stock in trade by supplementing inhumanity with perjury. Then the suppliant mentions interest, and utters the word security. All is changed. The frown is relaxed; with a genial smile he recalls old family connexion. Now it is ‘my friend.’ ‘I will see,’ says he, ‘if I have any money by me. Yes; there is that sum which a man I know has left in my hands on deposit for profit. He named very heavy interest. However, I shall certainly take something off, and give it you on better terms.’ With pretences of this kind and talk like this he fawns on the wretched victim, and induces him to swallow the bait. Then he binds him with written security, adds loss of liberty to the trouble of his pressing poverty, and is off. The man who has made himself responsible for interest which he cannot pay has accepted voluntary slavery for life. Tell me; do you expect to get money and profit out of the pauper? If he were in a position to add to your wealth, why should he come begging at your door? He came seeking an ally, and he found a foe. He was looking for medicine, and he lighted on poison. You ought to have comforted him in his distress, but in your attempt to grow fruit on the waste you are aggravating his necessity. Just as well might a physician go in to his patients, and instead of restoring them to health, rob them of the little strength they might have left. This is the way in which you try to profit by the misery of the wretched. Just as farmers pray for rain to make their fields fatter, so you are anxious for men’s need and indigence, that your money may make more. You forget that the addition which you are making to your sins is larger than the increase to your wealth which you are reckoning on getting for your usury. The seeker of the loan is helpless either way: he bethinks him of his poverty, he gives up all idea of payment as hopeless when at the need of the moment he risks the loan. The borrower bends to necessity and is beaten. The lender goes off secured by bills and bonds.

Ambrose (c. 340-397): On Tobias

Source: [S. Ambrosii: On Tobias](#)

2. 7. Because therefore he entrusted his money and did not put it out at usury, he observed the duty of a just man; for lending by which usury is sought is evil. But that lending is not evil concerning which it is written: "Lend to thy neighbor in the time of his need." For David says also: "The just showeth mercy and lendeth." That lending is different and rightly accursed, to give money for usury, which the law prohibits. But Tobias shunned this, who warned his son not to transgress the precept of the Lord, but of his substance to give alms, not to put out his money at interest, not to turn his face from any poor man. He who advises this condemns usury in lending. From this many /p. 29/ have made a profit, and to many it has been a business to lend money. And yet the saints have forbidden it. 8. The greater is the evil of lending at interest, the more praiseworthy is he who has avoided it. Give money if you have it; let that money which is idle with you help others. Give as though you were not to receive it back, that it may be reckoned as gain if it be returned. He who does not return money returns thanks. If you are defrauded of money, you acquire righteousness, for "just is the man that showeth mercy and lendeth." If money is lost, mercy is obtained; for it is written: "He who showeth mercy lendeth to his neighbor."

3. 9. Many through fear of loss do not lend, since they fear fraud, and this is what they are accustomed to say to those who ask of them. To every one of these it is said: "Lose thy money for thy brother's sake and for thy friend, and hide it not beneath a stone to be lost. Place thy treasure in the precepts of the most high and it shall avail thee more than gold." But the ears of men have been deaf to such salutary precepts, and especially the rich have their ears closed by that brazen din of their money. While they are counting their money they do not hear the words of Scripture. As soon as someone oppressed by necessity or solicitous for the redemption of his relatives, whom the barbarian is selling as captives, begins to ask, the rich man turns his face away, does not recognize nature, does not pity the humbleness of the suppliant, does not alleviate his need, does not consider our common frailty, stands inflexible with head thrown back, is not bent by his prayers, is not moved by his tears, is not broken by his cries of despair, swears that he does not have it, nay even that he himself is seeking a money-lender to assist his own necessities. Why do you add an oath to your hardness and avarice? You are not freed by your perjury, but bound. 10. But when mention has been made of usury or of a security, then, with arrogance thrown aside, the money-lender smiles and receives with a kiss the very one whom before he said he did not know, as though recollecting a paternal friendship; he invokes the assurance of their hereditary affection, /p. 31/ he forbids him to weep. "We will look," says he, "at home, if we have any money; I will break up for you my ancestral silver which is artistically wrought stuff. It will be a great loss. What interest will compensate for the value of ornamental works? But for a friend I will not shrink from loss. When you make return I will have them refashioned." And thus before he gives he hastens to receive, and from him whom he says he is helping to the highest degree he demands usury. "On the first," he says, "you will give me the interest. The capital, in the meantime, if you do not have the wherewithal to pay it, I will not require." As soon as he once gives, he harasses him repeatedly, and brings it about that he is always in debt to him. He treats the man in this way. And so first he binds him by signatures and holds him to the bond of his word. The money is counted, his freedom is pledged, the wretched man is freed from a smaller debt, he is bound by a greater. 11. Such, O rich men, are your kindnesses! You give less and you exact more. Such is your humanity that you despoil even while you are helping. even the poor man is fruitful to you unto gain. The usurer is needy: he has what he may render if you compel him, he does not have what he may spend. You are merciful men, certainly, who enslave to yourselves him whom you free from another!

He pays usury who lacks food. Is there anything more terrible? He asks for medicine, you offer him poison; he begs for bread, you offer him a sword; he begs for liberty, you impose slavery; he prays for freedom, you tighten the knot of the hideous snare.

[...]

8. 32. At the same time note this, that usury has been judged the basis of transgression, because he easily departs from the Lord who can obligate himself to the usurer. For interest is the root of deceit, the cause of faithlessness. "I have not sold you" He says, but "you are sold for our iniquities." Therefore he who binds himself to the usurer sells himself, and what is worse, sells himself not for money but for sin.

[...]

12. 40. For what is more vile than the man who puts out money at interest today and requires it tomorrow. "Such a man as this is hateful" Scripture says. For bland is the giving, but cruel the exaction. Certainly the kindness itself of the giving causes the cruelty of the exaction. He has put out his money, he requires securities, and hides them in his strongbox. One sum is given by the usurers, and how many are exacted from the debtors! how many terms have they made for themselves! Money is given, it is called a loan; it is termed money at interest, it is designated capital; it is written down as debt; this huge monster of many heads (capitum) causes frequent exactions; the usurer names the bond, he speaks of the signature, he demands securities, he talks of a pledge, he calls for sureties; he claims the legal obligation, he boasts of the interest, he praises the hundredths.

[...]

14. 46. Not new nor negligible is this evil, which is restrained by the Precept of the Old and Divine Law. The people who had despoiled Egypt, who had crossed the sea on foot, is warned to beware shipwrecks from the money of usury. And although it has prescribed once or with many times repeated admonition concerning other sins, most frequently has it referred to usury. You have in Exodus: "But if thou lend money to a ward, to an orphan, to a poor man among you, thou shalt not strangle him nor oppress him with usury." It shows what strangling is, that is, oppressing with usury, for, what is even worse, the noose of the /p. 63/ creditor strangles the soul. With this word it has expressed the violence of the robber and the suffering of a horrible death. "If thou take of thy neighbor a garment in pledge, thou shalt give it him again before sunset. For that same is the only thing wherewith he is covered, this is the clothing of his dishonor, in what shall he sleep? But if likewise he cry to me I will hear him." Have you heard usurers, what the Law says, concerning which our Lord said: "I am come not to destroy the law but to fulfill it?" What the Lord did not destroy, do you destroy? "To seek usury," he said, "is to strangle." This has also been said later by certain of their wise men outside the fold. "What is it to take interest? It is to kill a man," he says. But surely Cato was not before Moses who received the law. He was much later.

[...]

49. And because many, avoiding the precepts of the Law, when they have given money to merchants, do not require usury in money, but through their wares receive as it were the benefits of usury, let them likewise hear what the Law says: "Thou shalt receive," it says, "neither usury for food nor for anything, whatever thou hast lent to thy brother." For that is fraud and circumvention of the Law, not its observance. And do you think you are acting piously because you receive as it were a loan from the merchant? Thereby he commits fraud in the price of his goods from which he pays usury to you. You are the cause of this fraud, you are a partner; whatever he gets by fraud is to your profit. Food too is usury and clothing is usury, and whatever is added to capital is usury. Whatever name you wish to put upon it, it is usury. If it is lawful, why do you throw a cloak over it? if unlawful, why do you seek gain?

[...]

15. 52. Finally also in Leviticus the Law prescribes that usury must not be demanded from a brother. For thus you have: "and thy brother shall live with thee. Thou shalt not give him thy money upon usury nor exact of him any increase of fruits." This decision of God has excluded in general all increase of capital. Wherefore also David esteemed both blessed and worthy of a heavenly habitation the one "who did not give money to usury." If therefore he who did not give it is blessed, without doubt accursed is he who has given to usury. Why then do you choose a curse rather than a blessing? You can be blessed, if you wish, you can be just. For he is a just man, according to Ezekiel, who shall "restore the pledge /p. 69/ to the debtor, and shall not give his money upon usury, and shall not take an increase, and shall withdraw his hand from iniquity. He shall live," he says, "saith the Lord. " Moreover, "he who hath not restored the pledge, and hath lifted up his eyes to idols, hath committed abomination. Since he hath given upon usury and hath taken increase, he shall not live. He hath done all these detestable things, he shall die, his blood shall be upon him" See in what manner he has connected the usurer with the idolater, as though he would make the crime equal. Choose therefore what is sweet.

[...]

16. 54. But the Lord in the Gospels think we should lend rather to those from whom a return is not to be expected. For He speaks thus: "and if you lend to them from whom you hope to /p. 71/ receive, what thanks are to you? For sinners lend to sinners for to receive. but love ye your enemies, do good, and lend hoping for nothing, and your reward shall be great in Heaven, and you shall be the sons of the highest: for he is kind to the unthankful and to the evil. Be ye merciful as your Father is also merciful." You notice what name the usurer has received from the Lord, what name also he who has been bound by your usury. "Sinners," he says, "lend to sinners for to receive." both are sinners, both the usurer and the debtor. Do you, therefore, He says, "love your enemies." You should not discuss what your enemies may deserve, but what you ought to do. Lend to those from whom you do not hope that you will receive what has been given. Here is no loss, but a gain. You give very little, you will receive much; You give on earth and you will be paid in Heaven; you lose your interest, you will have a great reward; you stop being usurers, you will be "sons of the Highest," you will be the merciful who prove yourselves to be heirs of the Eternal Father.

Leo the Great (c. 400-461):

Sermon 17

Source: [Leo the Great, Gregory the Great \(Nicene and Post-Nicene Fathers Series\)](#)

II. *He that lends to the Lord makes a better bargain than he that lends to man.*

Be stedfast, Christian giver: give what you may receive, sow what you may reap, scatter what you may gather. Fear not to spend, sigh not over the doubtfulness of the gain. Your substance grows when it is wisely dispensed. Set your heart on the profits due to mercy, and traffic in eternal gains. Your Recompenser wishes you to be munificent, and He who gives that you may have, commands you to spend, saying, "Give, and it shall be given to you." You must thankfully embrace the conditions of this promise. For although you have nothing that you did not receive, yet you cannot fail to have what you give. He therefore that loves money, and wishes to multiply his wealth by immoderate profits, should rather practise this holy usury and grow rich by such money-lending, in order not to catch men hampered with difficulties, and by treacherous assistance entangle them in debts which they can never pay, but to be His creditor and His money-lender, who says, "Give, and it shall be given to you," and "with what measure ye measure, it shall be measured again to you⁷¹³." But he is unfaithful and unfair even to himself, who does not wish to have for ever what he esteems desirable. Let him amass what he may, let him hoard and store what he may, he will leave this world empty and needy, as David the prophet says, "for when he dieth he shall take nothing away, nor shall his glory descend with him⁷¹⁴." Whereas if he were considerate of his own soul, he would trust his good to Him, who is both the proper Surety⁷¹⁵ for the poor and the generous Repayer of loans. But unrighteous and shameless avarice, which promises to do some kind act but eludes it, trusts not God, whose promises never fail, and trusts man, who makes such hasty bargains; and while he reckons the present more certain than the future, often deservedly finds that his greed for unjust gain is the cause of by no means unjust loss.

III. *Money-lending at high interest is in all respects iniquitous.*

And hence, whatever result follow, the money-lender's trade is always bad, for it is sin either to lessen or increase the sum, in that if he lose what he lent he is wretched, and if he takes more than he lent he is more wretched still. The iniquity of money-lending must absolutely be abjured, and the gain which lacks all humanity must be shunned. A man's possessions are indeed multiplied by these unrighteous and sorry means, but the mind's wealth decays because usury of money is the death of the soul⁷¹⁶. For what God thinks of such men the most holy Prophet David makes clear, for when he asks, "Lord, who shall dwell in thy tabernacle, or who shall rest upon thy holy hill⁷¹⁷?" he receives the Divine utterance in reply, from which he learns that that man attains to eternal rest who among other rules of holy living "hath not given his money upon usury⁷¹⁸:" and thus he who gets deceitful gain from lending his money on usury is shown to be both an alien from God's tabernacle and ¹²⁷an exile from His holy hill, and in seeking to enrich himself by other's losses, he deserves to be punished with eternal neediness.

Council of Vienne (1311-1312)

Source: [Decrees of Ecumenical Councils](#), ed. Tanner ([papalencyclicals.net](#))

Serious suggestions have been made to us that communities in certain places, to the divine displeasure and injury of the neighbour, in violation of both divine and human law, approve of usury. By their statutes, sometimes confirmed by oath, they not only grant that usury may be demanded and paid, but deliberately compel debtors to pay it. By these statutes they impose heavy burdens on those claiming the return of usurious payments, employing also various pretexts and ingenious frauds to hinder the return. We, therefore, wishing to get rid of these pernicious practices, decree with the approval of the sacred council that all the magistrates, captains, rulers, consuls, judges, counsellors or any other officials of these communities who presume in the future to make, write or dictate such statutes, or knowingly decide that usury be paid or, if paid, that it be not fully and freely restored when claimed, incur the sentence of excommunication. They shall also incur the same sentence unless within three months they delete from the books of their communities, if they have the power, statutes of this kind hitherto published, or if they presume to observe in any way these statutes or customs. Furthermore, since money-lenders for the most part enter into usurious contracts so frequently with secrecy and guile that they can be convicted only with difficulty, we decree that they be compelled by ecclesiastical censure to open their account books, when there is question of usury. If indeed someone has fallen into the error of presuming to affirm pertinaciously that the practice of usury is not sinful, we decree that he is to be punished as a heretic; and we strictly enjoin on local ordinaries and inquisitors of heresy to proceed against those they find suspect of such error as they would against those suspected of heresy.

Calistus III: Usury and Contracts for Rent (1455)

Source: [Denzinger, Sources of Catholic Dogma \(§716\)](#)

Usury and Contract for Rent

[From the Constitution “Regimini universalis,” May 6, 1455]

A petition recently addressed to us proposed the following matter: For a very long time, and with nothing in memory running to the contrary, in various parts of Germany, for the common advantage of society, there has been implanted among the inhabitants of those parts and maintained up to this time through constant observance, a certain custom. By this custom, these inhabitants—or, at least, those among them, who in the light of their condition and indemnities, seemed likely to profit from the arrangement—encumber their goods, their houses, their fields, their farms, their possessions, and inheritances, selling the revenues or annual rents in marks, florins, or groats (according as this or that coin is current in those particular regions), and for each mark, florin, or groat in question, from those who have bought those coins, whether as revenues or as rents, have been in the habit of receiving a certain price appropriately fixed as to size according to the character of the particular circumstances, in conformity with the agreements made in respect of the relevant properties between themselves and the buyers. As guarantee for the payment of the

aforesaid revenues and rents they mortgage those of the aforesaid houses, lands, fields, farms, possessions, and inheritances that have been expressly named * in the relevant contracts. In the favor of the sellers it is added to the contract that in proportion as they have, in whole or in part, returned to the said buyers the money thus received, they are entirely quit and free of the obligation to pay the revenues and rents corresponding to the sum returned. But the buyers, on the other hand, even though the said goods, houses, lands, fields, possessions, and inheritances might by the passage of time be reduced to utter destruction and desolation, would not be empowered to recover even in respect of the price paid.

Now, by some a certain doubt and hesitation is entertained as to whether contracts of this kind are to be considered licit. Consequently, certain debtors, pretending these contracts would be usurious, seek to find thereby an occasion for the nonpayment of revenues and rents owed by them in this way. . . . We, therefore, ... in order to remove every doubt springing from these hesitations, by our Apostolic authority, do declare by these present letters that the aforesaid contracts are licit and in agreement with law, and that the said sellers, yielding all opposition, are effectively bound to the payment of the rents and revenues in conformity with the terms of the said contracts.

Fifth Lateran Council: Session 10

Excerpt (1515)

Source: [Denzinger, Sources of Catholic Dogma \(§739\)](#)

“Mountains of Piety” and Usury

[From the Bull “Inter multiplices,” April 28 (Session X, May 4), 1515]

With the approval of the holy Council, we declare and define that the aforesaid “Mountains of piety” established by the civil authorities and thus far approved and confirmed by the authority of the Apostolic See, in which a moderate rate of interest is received exclusively for the expenses of the officials and for other things pertaining to their keeping, as is set forth, for an indemnity of these as far as this matter is concerned, beyond the capital without a profit for these same Mountains, neither offer any species of evil, nor furnish an incentive to sin, nor in any way are condemned, nay rather that such a loan is worthwhile and is to be praised and approved, and least of all to be considered usury. . . . Moreover, we declare that all religious and ecclesiastics as well as secular persons, who henceforth shall dare to preach or dispute in word or in writing against the form of the present declaration and sanction, incur the penalty of excommunication of a sentence [automatically] imposed [latae sententiae], a privilege of any nature whatsoever notwithstanding.

Pius V: Cum Onus (1568)

Source: [Usury, Funds and Banks by Rev. Jeremiah O’Callaghan](#)

Whereas at undertaking the burden of the Apostolic servitude we have learned that innumerable contracts of rent have been, and are daily, celebrated, which are not only

not confined within the limits prescribed by our ancestors for these contracts, but even, what is worse, under conditions directly contrary ; moreover, they carry, on the face of them, an ardent stimulus for avarice, a manifest contempt even of the Divine laws, consulting, as we are bound to do, for the salvation of souls and in compliance even with the petitions of pious minds, to remedy by a salutary antidote such grievous disease and pestiferous poison.

We by this our constitution decree, that rent or an annuity, can by no means be created, or constituted, unless in an immoveable thing, or a thing that may be considered as immoveable, of its own nature fruitful, and that may be nominally designated by certain limits.

Again, unless in money truly paid down, in the presence of witnesses and a notary, and in the actual celebration of an instrument, but not when the entire and just price is not first received.

We forbid that the payments which are commonly called anticipated, be made or brought into agreement.

It is our will that the conventions binding directly or indirectly to the casual accidents the man who is not otherwise liable to them from the nature of the contracts, be, by no means valid.

Nor the pact, likewise, taking away or restraining the liberty of alienating the thing subject to the rent, because we wish that that thing be always alienated both freely and without the payment of a fine, or a portion of the sales, or of another quantity or thing, as well during the people's life as in their last will.

But, when the thing is to be sold, we wish that the lord of the rent be preferred to all others, and that the conditions of the sale be intimated to him, and that he be waited for a month.

Let the pacts providing that the remiss debtor of the rent be liable to pay the loss, expenses, or salaries of the creditor, to lose the thing, or any part of the thing, subject to the rent, or to forfeit any right arising to him from that contract, or otherwise, or to incur any penalty, be entirely null and void.

Moreover, we strictly forbid both that the rent be augmented, and new rent created upon the same or another thing, in favour of the same, or of a person appointed by him, in consideration of the rents of the past or future time.

And also, we annul the agreements, providing that the payment of the expenses do appertain to the man to whom they do not otherwise, from law/ and from the nature of the contract, appertain.

Finally, we wish that all rents to be hereafter created, do perish in proportion, not only when the thing is perished in the whole or in part, or rendered in v/hole or in part fruitless ; but that they can be extinguished for the same price, notwithstanding the prescription even of a very long time, even immemorial, nay, of a hundred and more years, notwithstanding any pacts taking away, directly or indirectly, such liberty, with whatever words or clauses they be made up.

But when the income is to be extinguished, by delivering the price, we wish that this be intimated two months beforehand, by the person, to whom the price ought to be delivered; and that, subsequent to the notice, the price can be recovered, however, within a year, from him, even against his will : and when he is not willing to demand the price within the year, we wish, however, that the rent can be extinguished at any time — the notice, however, being given, as said before, and notwithstanding the things that are mentioned above; and we command that the same course be observed, even when the notice had been often and often given, and the effect never produced.

We also strictly prohibit , the pacts, providing the price of the rent be, beyond the case mentioned, recovered from the unwilling man, either for a penalty, or for another cause.

And we judge that contracts, to be celebrated hereafter, under any other form, are usurious.

And, notwithstanding, whatever thing should happen, against our orders, to be explicitly or implicitly given, remitted, or forgiven, we wish that it be claimed by the public treasury. We wish that this wholesome decree be observed perpetually, and in every respect, not only in annuities to be newly created, but likewise in alienating them that are at any time already created, provided they be created subsequent to the publication of this decree.

Declaring that the price once affixed to the rent can never be diminished or augmented, on account of the quality of the time, or of the contracting parties, or of any other accident, nor with regard to any persons that may be ultimately concerned.

And though we do not extend this law to the contracts already celebrated, however we do exhort in the Lord all those persons to whom rents have come under another form, to submit each contract to the scrutiny of good religious persons, and to consult the salvation of their own souls.

PIUS V.

Given at Rome, 14 Calen. Feb. 1568

Sextus V: Detestabilis Avaritia

Ingluvies (1586)

Source: [Usury, Funds and Banks](#) by Jeremiah O'Callaghan

We do in this our perpetual decree, reprobate and condemn all contracts, pacts and conventions whatever, to be celebrated in future, whereby it will be provided on the part of the persons putting into company money, animals, or any other things whatever, that if, even by mere accident, any injury, loss, or damage, follow, the very principal, or capital be always safe and restored in full by the managing partner ; or that he guarantee to pay yearly, or monthly during the existence of the company a certain sum or quantity. We decree, that such contracts, pacts, or conventions are to be henceforward deemed illicit and usurious ; and that for the future it be not lawful for the partners that put into the company monies, animals, or any other articles, to agree or stipulate for recovering a certain profit ; not even, whether they stipulate for a definite or indefinite profit, to obligate by pact or promise the managing partner, to restore in full and entire the capital or principal, if by casual accident it be lost or destroyed. And we strictly forbid and prohibit that companies being hereafter formed under any pacts, or conditions of this sort, which .savor of usury. But rather let all people know that Fellowships of this nature, when one man will hereafter contribute money, animals, or other things or goods, and another yields his labor or industry, are to be formed or entered into honestly, sincerely and with good faith, as it should be, with fair and just conditions, according to the provisions of the law, and without fraud whatever, palliation, suspicion, or infection of the usurious depravity ; so that the managing partner be not obligated to pay as gain a certain sum, or quantity, free, as aforesaid, from all risk or danger ; nor to restore the capital, if, by any casualty, it should perish. But if the capital, at the dissolution of the partnership, be extant, let it be restored to him, who had contributed it to the company, unless it is to be shared with the manager, or otherwise distributed, according to law, between the contractors. Moreover, let the contractors cast up the fruits, costs and losses, and let them share and divide them fairly and justly.

Decreeing that if any contracts, pacts, or agreements be hereafter, in opposition to our Constitution, actually formed, no civil or natural obligation will arise therefrom,, thus condemned and reprobated by this our Constitution, though they be confirmed by oath, or otherwise ; and no action real or personal, or any other title appertains to any person either for recovering in full the capital or principal, if it should by any casualty perish, or be lost ; nor to any specific sum or quantity promised yearly or monthly under the appellation of profit.

If any man do in future rashly presume to contract under the foregoing pacts or conditions ; or under the veil of such conventions, pacts, or contracts formed in the name of a company heretofore existing, do presume to take proceedings for the recovery of the said capital or principal, or the value or price thereof, after it be casually lost or perished, in the whole or in part, or of an annual or monthly specified sum or quantity, We decree that they, and every one of them do, ipso facto, incur the penalties decreed and promulgated by the Sacred Canons and General Councils against notorious usurers, and that they could and ought to be proceeded against as against notorious ururers with the law and with other suitable remedies.

— Pope Sextus V Rome, 25th Oct. 1586.

Innocent XI: Various Errors on Moral Subjects (1679)

Source: [Denzinger, Sources of Catholic Dogma \(§1190-1192\)](#)

40. A usurious contract is permitted even with respect to the same person, and with a contract to sell back previously entered upon with the intention of gain.

41. Since ready cash is more valuable than that to be paid, and since there is no one who does not consider ready cash of greater worth than future cash, a creditor can demand something beyond the principal from the borrower, and for this reason be excused from usury.

42. There is no usury when something is exacted beyond the principal as due because of a kindness and by way of gratitude, but only if it is exacted as due according to justice.

Benedict XIV: Vix Pervenit (1745) (English)

Source: papalencyclicals.net

Vix Pervenit

On Usury and Other Dishonest Profits

To the Venerable Brothers, Patriarchs, Archbishops, Bishops and Ordinary Clergy of Italy.

Venerable Brothers, Greetings and Apostolic Benediction.

Hardly had the new controversy (namely, whether certain contracts should be held valid) come to our attention, when several opinions began spreading in Italy that hardly seemed to agree with sound doctrine; We decided that We must remedy this. If We did not do so immediately, such an evil might acquire new force by delay and silence. If we neglected our duty, it might even spread further, shaking those cities of Italy so far not affected.

Therefore We decided to consult with a number of the Cardinals of the Holy Roman Church, who are renowned for their knowledge and competence in theology and canon law. We also called upon many from the regular clergy who were outstanding in both the faculty of theology and that of canon law. We chose some monks, some

mendicants, and finally some from the regular clergy. As presiding officer, We appointed one with degrees in both canon and civil law, who had lengthy court experience. We chose the past July 4 for the meeting at which We explained the nature of the whole business. We learned that all had known and considered it already.

2. We then ordered them to consider carefully all aspects of the matter, meanwhile searching for a solution; after this consideration, they were to write out their conclusions. We did not ask them to pass judgment on the contract which gave rise to the controversy since the many documents they would need were not available. Rather We asked that they establish a fixed teaching on usury, since the opinions recently spread abroad seemed to contradict the Church's doctrine. All complied with these orders. They gave their opinions publicly in two convocations, the first of which was held in our presence last July 18, the other last August 1; then they submitted their opinions in writing to the secretary of the convocation.

3. Indeed they proved to be of one mind in their opinions.

I. The nature of the sin called usury has its proper place and origin in a loan contract. This financial contract between consenting parties demands, by its very nature, that one return to another only as much as he has received. The sin rests on the fact that sometimes the creditor desires more than he has given. Therefore he contends some gain is owed him beyond that which he loaned, but any gain which exceeds the amount he gave is illicit and usurious.

II. One cannot condone the sin of usury by arguing that the gain is not great or excessive, but rather moderate or small; neither can it be condoned by arguing that the borrower is rich; nor even by arguing that the money borrowed is not left idle, but is spent usefully, either to increase one's fortune, to purchase new estates, or to engage in business transactions. The law governing loans consists necessarily in the equality of what is given and returned; once the equality has been established, whoever demands more than that violates the terms of the loan. Therefore if one receives interest, he must make restitution according to the commutative bond of justice; its function in human contracts is to assure equality for each one. This law is to be observed in a holy manner. If not observed exactly, reparation must be made.

III. By these remarks, however, We do not deny that at times together with the loan contract certain other titles-which are not at all intrinsic to the contract-may run parallel with it. From these other titles, entirely just and legitimate reasons arise to demand something over and above the amount due on the contract. Nor is it denied that it is very often possible for someone, by means of contracts differing entirely from loans, to spend and invest money legitimately either to provide oneself with an annual income or to engage in legitimate trade and business. From these types of contracts honest gain may be made.

IV. There are many different contracts of this kind. In these contracts, if equality is not maintained, whatever is received over and above what is fair is a real injustice. Even though it may not fall under the precise rubric of usury (since all reciprocity, both open and hidden, is absent), restitution is obligated. Thus if everything is done correctly and weighed in the scales of justice, these same legitimate contracts suffice

to provide a standard and a principle for engaging in commerce and fruitful business for the common good. Christian minds should not think that gainful commerce can flourish by usuries or other similar injustices. On the contrary We learn from divine Revelation that justice raises up nations; sin, however, makes nations miserable.

V. But you must diligently consider this, that some will falsely and rashly persuade themselves-and such people can be found anywhere-that together with loan contracts there are other legitimate titles or, excepting loan contracts, they might convince themselves that other just contracts exist, for which it is permissible to receive a moderate amount of interest. Should any one think like this, he will oppose not only the judgment of the Catholic Church on usury, but also common human sense and natural reason. Everyone knows that man is obliged in many instances to help his fellows with a simple, plain loan. Christ Himself teaches this: "Do not refuse to lend to him who asks you." In many circumstances, no other true and just contract may be possible except for a loan. Whoever therefore wishes to follow his conscience must first diligently inquire if, along with the loan, another category exists by means of which the gain he seeks may be lawfully attained.

4. This is how the Cardinals and theologians and the men most conversant with the canons, whose advice We had asked for in this most serious business, explained their opinions. Also We devoted our private study to this matter before the congregations were convened, while they were in session, and again after they had been held; for We read the opinions of these outstanding men most diligently. Because of this, We approve and confirm whatever is contained in the opinions above, since the professors of Canon Law and Theology, scriptural evidence, the decrees of previous popes, and the authority of Church councils and the Fathers all seem to enjoin it. Besides, We certainly know the authors who hold the opposite opinions and also those who either support and defend those authors or at least who seem to give them consideration. We are also aware that the theologians of regions neighboring those in which the controversy had its origin undertook the defense of the truth with wisdom and seriousness.

5. Therefore We address these encyclical letters to all Italian Archbishops, Bishops, and priests to make all of you aware of these matters. Whenever Synods are held or sermons preached or instructions on sacred doctrine given, the above opinions must be adhered to strictly. Take great care that no one in your dioceses dares to write or preach the contrary; however if any one should refuse to obey, he should be subjected to the penalties imposed by the sacred canons on those who violate Apostolic mandates.

6. Concerning the specific contract which caused these new controversies, We decide nothing for the present; We also shall not decide now about the other contracts in which the theologians and canonists lack agreement. Rekindle your zeal for piety and your conscientiousness so that you may execute what We have given.

7. First of all, show your people with persuasive words that the sin and vice of usury is most emphatically condemned in the Sacred Scriptures; that it assumes various forms and appearances in order that the faithful, restored to liberty and grace by the blood of Christ, may again be driven headlong into ruin. Therefore, if they desire to invest their

money, let them exercise diligent care lest they be snatched by cupidity, the source of all evil; to this end, let them be guided by those who excel in doctrine and the glory of virtue.

8. In the second place, some trust in their own strength and knowledge to such an extent that they do not hesitate to give answers to those questions which demand considerable knowledge of sacred theology and of the canons. But it is essential for these people, also, to avoid extremes, which are always evil. For instance, there are some who judge these matters with such severity that they hold any profit derived from money to be illegal and usurious; in contrast to them, there are some so indulgent and so remiss that they hold any gain whatsoever to be free of usury. Let them not adhere too much to their private opinions. Before they give their answer, let them consult a number of eminent writers; then let them accept those views which they understand to be confirmed by knowledge and authority. And if a dispute should arise, when some contract is discussed, let no insults be hurled at those who hold the contrary opinion; nor let it be asserted that it must be severely censured, particularly if it does not lack the support of reason and of men of reputation. Indeed clamorous outcries and accusations break the chain of Christian love and give offense and scandal to the people.

9. In the third place, those who desire to keep themselves free and untouched by the contamination of usury and to give their money to another in such a manner that they may receive only legitimate gain should be admonished to make a contract beforehand. In the contract they should explain the conditions and what gain they expect from their money. This will not only greatly help to avoid concern and anxiety, but will also confirm the contract in the realm of public business. This approach also closes the door on controversies-which have arisen more than once-since it clarifies whether the money, which has been loaned without apparent interest, may actually contain concealed usury.

10. In the fourth place We exhort you not to listen to those who say that today the issue of usury is present in name only, since gain is almost always obtained from money given to another. How false is this opinion and how far removed from the truth! We can easily understand this if we consider that the nature of one contract differs from the nature of another. By the same token, the things which result from these contracts will differ in accordance with the varying nature of the contracts. Truly an obvious difference exists between gain which arises from money legally, and therefore can be upheld in the courts of both civil and canon law, and gain which is illicitly obtained, and must therefore be returned according to the judgments of both courts. Thus, it is clearly invalid to suggest, on the grounds that some gain is usually received from money lent out, that the issue of usury is irrelevant in our times.

11. These are the chief things We wanted to say to you. We hope that you may command your faithful to observe what these letters prescribe; and that you may undertake effective remedies if disturbances should be stirred up among your people because of this new controversy over usury or if the simplicity and purity of doctrine should become corrupted in Italy. Finally, to you and to the flock committed to your care, We impart the Apostolic Benediction.

Given in Rome at St. Mary Major, November 1, 1745, the sixth year of Our Pontificate.

Benedict XIV: Vix Pervenit (1745) (Latin)

Source: [Domus Ecclesiae](#)

Epistola encyclica »Vix pervenit«

DE USURIS ALIISQUE INJUSTIS QUÆSTIBUS

Venerabilibus fratribus patriarchis, archiepiscopis, episcopis, et ordinariis Italiæ.

Venerabilis frater, salutem et apostolicam benedictionem.

Vix pervenit ad aures Nostras, ob novam controversiam (nempe, an quidam contractus validus judicari debeat) nonnullas per Italiam disseminari sententias, quæ sanæ doctrinæ haud consentaneæ viderentur; cum statim Nostri apostolici muneris partem esse duximus, opportunum afferre remedium, ne malum ejusmodi, temporis diuturnitate, ac silentio, vires magis acquireret; aditumque ipsi intercludere, ne latius serperet, et incolumes adhuc Italiæ civitates labefactaret.

§ 1. Quapropter eam rationem, consiliumque suscepimus, quo Sedes Apostolica semper uti consuevit: Quippe rem totam explicavimus nonnullis ex venerabilibus fratribus Nostri Sanctæ Romanæ Ecclesiæ cardinalibus, qui sacræ theologiæ scientia, et canonicæ disciplinæ studio ac peritia plurimum commendantur: accivimus etiam plures regulares in utraque facultate præstantes; quorum aliquos ex monachis, alios ex ordine mendicantium, alios demum ex clericis regularibus selegimus; præsulem quoque juris utriusque laurea præditum, et in foro diu versatum adhibuimus. Diem quartam indiximus Julii, qui nuper præteriit, ut coram Nobis illi omnes convenirent, quibus naturam totius negotii declaravimus; quod illis antea cognitum perspectumqueprehendimus.

§ 2. Post hæc præcepimus, ut omni partium studio, omnique cupiditate soluti, rem totam accurate perpenderent, suasque opiniones scripto exararent; non tamen expetivimus ab ipsis, ut judicium ferrent de contractu, qui controversiæ causam initio præbuerat, cum plura documenta non suppeterent, quæ necessario ad id requirebantur; sed ut certam de usuris doctrinam constituerent, cui non mediocre detrimentum inferre videbantur ea, quæ nuper in vulgus spargi cœperunt: jussa fecerunt universi; nam suas sententias palam declararunt in duabus congregationibus, quarum prima coram Nobis habita est die 18. Julii, altera vero die prima Augusti, qui menses nuper elapsi sunt; ac demum easdem sententias congregationis secretario scriptas tradiderunt.

§ 3. Porro hæc unanimi consensu probaverunt:

I. Peccati genus illud, quod usura vocatur, quodque in contractu mutui propriam suam sedem et locum habet, in eo est repositum, quod quis ex ipsomet mutuo, quod suapte natura tantundem dumtaxat reddi postulat, quantum receptum est, plus sibi reddi velit, quam est receptum; ideoque ultra sortem, lucrum aliquod, ipsius ratione mutui,

sibi deberi contendat. Omne propterea hujusmodi lucrum, quod sortem superet, illicitum, et usurarium est.

II. Neque vero ad istam labem purgandam, ullum arcessiri subsidium potent, vel ex eo, quod id lucrum non excedens, et nimium, sed moderatum; non magnum, sed exiguum sit; vel ex eo, quod is, a quo id lucrum solius causa mutui deponitur, non pauper, sed dives existat; nec datam sibi mutuo summam relicturus otiosam, sed ad fortunas suas amplificandas, vel novis cœmendis prædiis, vel quæstuosis agitandis negotiis, utilissime sit impensurus. Contra mutui siquidem legem, quæ necessario in dati atque redditu æqualitate versatur, agere ille convincitur, quisquis, eadem æqualitate semel posita, plus aliquid a quolibet, vi mutui ipsius, cui per æquale jam satis est factum, exigere adhuc non veretur: proindeque si acceperit, restituendo erit obnoxius, ex ejus obligatione justitiæ, quam commutativam appellant, et cujus est, in humanis contractibus æqualitatem cujusque propriam et sancte servare, et non servatam exacte reparare.

III. Per hæc autem nequaquam negatur, posse quandoque una cum mutui contractu quosdam alios, ut ajunt, titulos, eosdemque ipsimet universim naturæ mutui minime innatos et intrinsecos, forte concurrere, ex quibus justa omnino legitimaque causa consurgat quiddam amplius supra sortem ex mutuo debitam rite exigendi. Neque item negatur, posse multoties pecuniam ab unoquoque suam, per alios diversæ prorsus naturæ a mutui natura contractus, recte collocari et impendi, sive ad proventus sibi annuos conquirendos, sive etiam ad licitam mercaturam, et negotiationem exercendam, honestaque indidem lucra percipienda.

IV Quemadmodum vero in tot ejusmodi diversis contractuum generibus, si sua cujusque non servatur æqualitas, quidquid plus justo recipitur, si minus ad usuram (eo quod omne mutuum tam apertum, quam palliatum absit), at certe ad aliam veram injustitiam, restituendi onus pariter asserentem, spectare compertum est; ita si rite omnia peragantur, et ad justitiæ libram exigantur, dubitandum non est, quin multiplex in iisdem contractibus licitis modus et ratio suppetat humana commercia et fructuosam ipsam negotiationem ad publicum commodum conservandi ac frequentandi. Absit enim a Christianorum animis, ut per usuras, aut similes alienas injurias, florere posse lucrosa commercia existiment; cum contra ex ipso oraculo divino discamus, quod «Justitia elevat gentem, miseros autem facit populos peccatum».

V Sed illud diligenter animadvertendum est, falso sibi quemquam, et nonnisi temere persuasurum, reperiri semper, ac præsto ubique esse, vel una cum mutuo titulos alios legitimos, vel secluso etiam mutuo, contractus alios justos, quorum vel titulorum, vel contractuum præsidio, quotiescumque pecunia, frumentum, aliudve id generis alteri cuicumque, creditur, toties semper liceat auctarium moderatum, ultra sortem integram salvamque recipere. Ita si quis senserit, non modo divinis documentis, et catholicæ Ecclesiæ de usura judicio, sed ipsi etiam humano communi sensui, ac naturali rationi procul dubio adversabitur. Neminem enim id saltem latere potest, quod multis in casibus tenetur homo, simplici ac nudo mutuo alteri succurrere, ipso præsertim Christo Domino edocente: «Volenti mutuari a te, ne avertaris»; et quod similiter multis in circumstantiis, præter unum mutuum, alteri nulli vero justoque contractui locus esse possit. Quisquis igitur suæ conscientiæ consultum velit, inquirat prius diligenter, oportet, vere ne cum mutuo justus alius titulus, verene justus alter a

mutuo contractus occurrat, quorum beneficio, quod quærit lucrum, omnis labis expers et immune reddatur.

§ 4. His verbis complectuntur, et explicant sententias suas cardinales ac theologi et viri canonum peritissimi, quorum consilium in hoc gravissimo negotio postulavimus; Nos quoque privatum studium Nostrum conferre in eamdem causam non prætermisimus, antequam congregationes haberentur, et quo tempore habebantur, et ipsis etiam peractis. Nam præstantium virorum suffragia, quæ modo commemoravimus, diligentissime percurrimus. Cum hæc ita sint, adprobamus, et confirmamus quæcumque in sententiis superius expositis continentur; cum scriptores plane omnes, theologiæ, et canonum professores, plura sacrarum literarum testimonia, pontificum decessorum Nostrorum decreta, conciliorum, et patrum auctoritas, ad easdem sententias comprobandas pene conspirare videantur. Insuper apertissime cognovimus auctores, quibus contrariæ sententiæ referri debent; et eos pariter, qui illas fovent, ac tumentur, aut illis ansam, seu occasionem præbere videntur; neque ignoramus quanta sapientia, et gravitate defensionem veritatis susceperint theologi finitimi illis regionibus, ubi controversiæ ejusmodi principium habuerunt.

§ 5. Quare has litteras Encyclicas dedimus universis Italiæ archiepiscopis, episcopis, et ordinariis, ut hæc tibi, venerabilis frater, et cæteris omnibus innotescerent; et quoties synodos celebrare, ad populum verba facere, eumque sacris doctrinis instruere contigerit, nihil omnino alienum proferatur ab iis sententiis, quas superius recensuimus. Admonemus etiam vehementer, omnem sollicitudinem impendere, ne quis in vestris diœcesibus audeat litteris, aut sermonibus contrarium docere: si quis autem parere detrectaverit, illum obnoxium et subjectum declaramus pœnis per sacros canones in eos propositis, qui mandata apostolica contempserint ac violaverint.

§ 6. De contractu autem, qui novas has controversias excitavit, nihil in præsentia statuimus; nihil etiam decernimus modo de aliis contractibus, pro quibus theologi, et canonum interpretes in diversas abeunt sententias; attamen pietatis vestræ studium ac religionem inflammandam existimamus, ut hæc, quæ subjicimus, executioni demandetis.

§ 7. Primum gravissimis verbis populis vestris ostendite, usuræ labem ac vitium a divinis litteris vehementer improbari; illud quidem varias formas atque species induere, ut fideles Christi Sanguine restitutos in libertatem et gratiam, rursus in extremam ruinam præcipites impellat; quocirca si pecuniam suam collocare velint, diligenter caveant, ne cupiditate omnium malorum fonte rapiantur: sed potius ab illis, qui doctrinæ ac virtutis gloria supra cæteros efferuntur, consilium exposcant.

§ 8. Secundo loco; qui viribus suis, ac sapientiæ ita confidunt, ut responsum ferre de iis quæstionibus non dubitent (quæ tamen haud exiguum sacræ theologiæ, et canonum scientiam requirunt), ab extremis, quæ semper vitiosa sunt, longe se abstineant: etenim aliqui tanta severitate de iis rebus judicant, ut quamlibet utilitatem ex pecunia desumptam accusent, tamquam illicitam, et cum usura conjunctam; contra vero nonnulli indulgentes adeo, remissique sunt, ut quodcumque emolumentum ab usuræ turpitudine liberum existiment. Suis privatis opinionibus ne nimis adhæreant; sed priusquam responsum reddant, plures scriptores examinent, qui magis inter cæteros prædicantur; deinde eas partes suscipiant, quas tum ratione, tum auctoritate plane

confirmatas intelligent. Quod si disputatio insurgat, dum contractus aliquis in examen adducitur, nullæ omnino contumeliæ in eos confingantur, qui contrariam sententiam sequuntur, neque illam gravibus censuris notandam asserant, si præsertim ratione, et præstantium virorum testimoniis minime careat; siquidem convicia, atque injuriæ vinculum christianæ charitatis infringunt, et gravissimam populo offensionem, et scandalum præseferunt.

§ 9. Tertio loco, qui ab omni usuræ labe se immunes et integros præstare volunt, suamque pecuniam ita alteri dare, ut fructum legitimum solummodo percipiant, admonendi sunt, ut contractum instituendum antea declarent, et condiciones inserendas explicent, et quem fructum ex eadem pecunia postulent. Hæc magnopere conferunt non modo ad animi solitudinem et scrupolos evitandos, sed ad ipsum contractum in foro externo comprobandum: hæc etiam aditum intercludunt disputationibus, quæ non semel concitandæ sunt, ut clare pateat, utrum pecunia, quæ rite data alteri esse videtur, revera tamen palliatam usuram contineat.

§ 10. Quarto loco vos hortamur, ne aditum relinquatis ineptis illorum sermonibus, qui dictitant, de usuris hoc tempore quæstionem institui, quæ solo nomine contineatur; cum ex pecunia, quæ qualibet ratione alteri conceditur, fructus ut plurimum comparetur. Etenim quam falsum id sit, et a veritate alienum plane deprehendimus, si perpendamus, naturam unius contractus ab alterius natura prorsus diversam et sejunctam esse; et ea pariter discrepare magnopere inter se, quæ a diversis inter se contractibus consequuntur. Revera discrimen apertissimum intercedit fructum inter, qui jure licito ex pecunia desumitur, ideoque potest in utroque foro retineri; ac fructum, qui ex pecunia illicite conciliatur; ideoque fori utriusque judicio restituendus decemitur. Constat igitur haud inanem de usuris quæstionem hoc tempore proponi ob eam causam, quod ut plurimum ex pecunia, quæ alteri tribuitur, fructus aliquis excipiat.

§ 11. Hæc potissimum vobis indicanda censuimus, sperantes fore, ut mandetis executioni quæcumque per has litteras a Nobis præscribuntur: opportunis quoque remediis consulatis, uti confidimus, si forte ob hanc novam de usuris controversiam in diœcesi vestra turbæ concitentur, vel corruptelæ ad labefactandum sanæ doctrinæ candorem et puritatem inducantur: postremo vobis, et gregi curæ vestræ concredito, apostolicam benedictionem impertimur.

Datum Romæ apud S. Mariam Majorem die prima Novembris MDCCXLV, pontificatus Nostri anno sexto.

Benedictus PP. XIV

Commentary on the Sentences Bk 3 Dist 37 A 6

Source: [Corpus Thomisticum](#)

ARTICULUS 6

Utrum usuras accipere sit peccatum

[12984] Super Sent., lib. 3 d. 37 q. 1 a. 6 arg. 1 Ad sextum sic proceditur. Videtur quod usuras accipere non sit peccatum. Nihil enim est peccatum nisi quod est contra praeceptum aliquod morale: caeremonialia autem, et judicialia legis Mosaicae nos non obligant. Sed praeceptum de non accipiendo usuram, non est morale: quia praecepta moralia obligant respectu omnium, et ad omnes; sed Deut. 23, Judaeis conceditur quod fenerentur non proximis, sed extraneis. Ergo usuras accipere non est peccatum.

[12985] Super Sent., lib. 3 d. 37 q. 1 a. 6 arg. 2 Praeterea, constat quod ille qui alicui pecuniam mutuatur, aliquod commodum ei facit. Sed secundum philosophum in 5 Ethic., *in retributione commanet civitas*, ut scilicet quantum quis fecit, tantum ei fiat. Ergo non est peccatum, sed licitum et justum, ut pro commodo quod mutuando fecit, aliquod lucrum reportet.

[12986] Super Sent., lib. 3 d. 37 q. 1 a. 6 arg. 3 Si dicas, quod tenebatur ei gratis mutuare; unde in hoc peccat quod vendit alicui quod ei debebat: contra. Secundum hoc ergo non peccabit lucrum de mutuo quaerens, nisi quando mutuare tenetur. Sed non semper tenetur mutuare. Ergo aliquando licet ei usuras accipere.

[12987] Super Sent., lib. 3 d. 37 q. 1 a. 6 arg. 4 Praeterea, non minus possum accipere ab eo cui beneficium extiti, quam ab eo cui nullum beneficium contuli. Sed si aliquis cui non mutuassem, aliquid mihi daret de suo, etiam si sperassem accipere, licite detinere possem. Ergo et ab eo cui beneficium extiti, mutuum concedendo, licet mihi aliquid expectare, recipere, et detinere.

[12988] Super Sent., lib. 3 d. 37 q. 1 a. 6 arg. 5 Praeterea, plus efficitur mihi debitor ille in quem transtuli dominium rei meae, quam ille cui solum usum rei meae concessi. Sed in rebus in quibus non transfertur dominium, si concedantur ad aliquem usum, licet inde aliquid accipere, sicut patet in locationibus domorum, equorum, et hujusmodi. Ergo multo amplius licet mihi accipere ab eo in quem per mutuum pecuniae meae dominium transtuli.

[12989] Super Sent., lib. 3 d. 37 q. 1 a. 6 arg. 6 Praeterea, quicumque communicat alicui in peccato mortali, peccat mortaliter. Sed ille qui dat usuras accipiens mutuum, communicat ei qui accipit usuras dans mutuum. Si ergo accipiens usuras semper peccat, videtur quod et dans; quod falsum est.

[12990] Super Sent., lib. 3 d. 37 q. 1 a. 6 s. c. 1 Sed contra, Luc. 6: *date mutuum, nihil inde sperantes*. Sed contra hoc veniunt feneratores. Ergo peccant.

[12991] Super Sent., lib. 3 d. 37 q. 1 a. 6 s. c. 2 Praeterea, ea quae veniunt in eadem divisionem, sunt unius rationis. Sed dare pecuniam ad usuram connumeratur aliis quae sunt peccata mortalia, ut patet in Psalm. 14: *domine, quis habitabit in tabernaculo tuo?* Ergo est peccatum mortale.

[12992] Super Sent., lib. 3 d. 37 q. 1 a. 6 s. c. 3 Praeterea, ubicumque est turpe lucrum, est peccatum. Sed philosophus ponit in 4 Ethic. feneratores inter turpes lucratores. Ergo et cetera.

[12993] Super Sent., lib. 3 d. 37 q. 1 a. 6 co. Respondeo dicendum, quod ab omnibus dicitur communiter quod dare ad usuram peccatum mortale est. Sed diversi diversas rationes assignant. Quidam enim dicunt, quod ideo pecuniam pro certo lucro concedere non licet, sicut donum vel equum, vel alia hujusmodi, quia pecunia non

deterioratur ex usu, sed aliis rebus aliquid deperit ex usu. Sed ista ratio non est generalis: quia in aliquibus rebus, pro quarum concessione aliquid accipi potest licite, nihil ex usu deperit, sicut in concessione domus ad usum ad unum diem; et praeterea pretium quod accipitur, non commensuratur damno quod accidit ex usu rei; non enim tantum deperit in mutuo quantum datur. Et ideo alii assignant aliam rationem, quia videlicet quando pecunia mutuatur, transfertur dominium, quod non fit in domo et in aliis rebus. Justum autem videtur ut pro usu rei quae mea remanet, scilicet domus, aliquid accipere possim; sed pro usu pecuniae, quae fit alterius ex hoc ipso quod mutuatur, aliquid accipere, nihil aliud est quam accipere aliquid ab aliquo pro usu rei propriae; et ideo videtur quod est quaedam exactio, et peccatum. Et haec ratio satis probabilis videtur; et ideo simile accidit in omnibus rebus in quibus transfertur dominium per mutuum, sicut granum, vinum, et hujusmodi, pro quorum usu nihil accipere licet ultra valorem ejus quod mutuatum est. Potest tamen et alia ratio assignari; quia omnes aliae res ex seipsis habent aliquam utilitatem, pecunia autem non, sed est mensura utilitatis aliarum rerum, ut patet per philosophum in 5 Ethic. Et ideo pecuniae usus non habet mensuram utilitatis ex ipsa pecunia, sed ex rebus quae per pecuniam mesurantur secundum differentiam ejus qui pecuniam ad res transmutat. Unde accipere majorem pecuniam pro minori, nihil aliud esse videtur quam diversificare mensuram in accipiendo, et dando; quod manifeste iniquitatem continet.

[12994] Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 1Ad primum ergo dicendum, quod lex Deuteronomii loquitur de Judaeis respectu aliarum nationum quae terram promissionis Judaeis divinitus concessam detinebant; et ideo permissum fuit eis, usuris, et quibuscumque exactionibus extorquere ab injuste possidentibus quod eis juste debebatur, sicut etiam dicitur de spoliatione Aegyptiorum, qui Judaeis mercedem laboris quo eis servierant, subtraxerunt. Vel dicendum, quod sicut libellus repudii permissus est eis ad duritiam cordis eorum, ne uxores interficerent, ad quod proni erant; ita etiam permissum fuit eis fenerare extraneis, ne fratribus suis fenerarent, ad quod eos innata avaritia incitabat.

[12995] Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 2Ad secundum dicendum, quod beneficium mutui non est amplius quam pecunia mutuata; unde si plus exigitur, exigitur plus quam debitum est; et ideo est injusta exactio.

[12996] Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 3Ad tertium dicendum, quod quamvis homo non teneatur semper mutuum concedere, tenetur tamen ad hoc ut quandocumque mutuum exigit, non plus exigat quam dederat.

[12997] Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 4Ad quartum dicendum, quod ab eo cui beneficium contuli, licet mihi tantum sperare et accipere quantum feci, et non plus. Quidquid autem de utilitate contingit ei cui mutuum dedi, ultra mensuram mutui ex pecunia mutuata, hoc est ex industria ejus qui sagaciter pecunia usus est: industriam autem ejus sibi vendere non debeo, sicut nec pro stultitia ejus minus habere debeo.

[12998] Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 5Ad quintum dicendum, quod hoc ipso quod dominium pecuniae transfertur, est ratio quare pro usu ejus nihil accipere debeam vel sperare quasi mihi debitum.

[12999] Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 6Ad sextum dicendum, quod ille qui usuras dat et mutuum accipit in necessitate, non peccat, nec usurario communicat inquantum hujusmodi: quia non voluntarius usuram dat, sed quasi coactus necessitate.

A Letter on Credit Sales and Usury

Source: [Dominican House of Studies](#)

DE EMPTIONE ET VENDITIONE AD TEMPUS
A Letter on Credit Sales and Usury

by Thomas Aquinas

TRANSLATED BY ALFRED O'RAHILLY,

"NOTES ON ST. THOMAS III – ST. THOMAS ON CREDIT." *IRISH ECCLESIASTICAL RECORD*, 5TH
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Prooemium	Opening
Carissimo sibi in Christo fratri Iacobo Viterbiensi lectori Florentino, frater Thomas de Aquino salutem.	To his very dear brother in Christ, James of Viterbo, Lector at Florence, from Brother Thomas of Aquin: Greetings.
Caput 1	Chapter 1
Recepi litteras vestras cum quibusdam casibus super quibus electi Capuani et meam sententiam petebatis. Super quibus collatione habita cum eodem Capuano electo et postmodum cum domino Hugone cardinali, duxi ad primum casum taliter respondendum:	I received your letter containing some cases concerning which you requested the opinion of the Archbishop Elect of Capua and myself. After a discussion thereon with the aforesaid Archbishop Elect and afterwards with Cardinal Hugh, I decided that the following reply should be made to the first case.
quod —supposito quod illa consuetudo de dilatione solutionis usque ad spatium trium mensium, sicut proponitur, sit ad commune bonum mercatorum, scilicet pro	Assuming that the custom of deferring payment for three months, as is set forth in the case, has been introduced for the common good of merchants, that is, for

expediendis mercationibus, et non in fraudem usurarum introducta— videtur esse distinguendum. Quia aut vendit venditor suas mercationes ad terminum praedictum ultra quantitatem iusti pretii propter expectationem, aut secundum iusti pretii quantitatem.

facilitating commerce, and not for fraudulent usury: then a distinction must be made. For the vendor, while granting credit for the aforesaid interval, sells his goods either (1) for an amount exceeding the just price on account of his waiting for payment, or (2) for an amount equal to the just price.

Si primo modo, non est dubium usurarium esse contractum, cum expectatio temporis sub pretio cadat. Nec potest esse excusatio si secundus venditor sit primi minister, cum ob nullam causam liceat pro termino expectationis pecuniae pretium augeri.

In the first alternative there is no doubt that contract is usurious, inasmuch as the waiting for a certain time is included in the price. And this is not excused by the fact that the second vendor may be employed by the first, since for no cause whatever may the price be increased on account of the interval for which payment is deferred.

Si autem secundo modo, non est usura. Nec obstat si pro minori pretio daret si statim pecunia solveretur. Quod per simile potest in aliis debitis videri; quia si alicui debeatur aliquid ad certum terminum, quandocumque de eo quod est sibi debitum dimitteret si sibi citius solveretur, in quo casu constat eum cui debetur ab usurae peccato omnino esse immunem. Licet enim plus accipere de debito propter temporis dilationem usuram sapiat, minus tamen accipere ut sibi citius solvatur usuram non sapit, maxime ex parte eius qui minus recipit, quamvis ex parte eius qui minus dat ut citius solvat, videatur esse aliquis modus usurae cum spatium temporis vendat. Unde etiam in casu proposito plus esset de usura timendum emptori qui ubi ante tres menses solvat, minus iusta extimatione pannos emit, quam venditori qui minus accipit ut citius ei solvatur.

In the second alternative, there is no usury. Nor does the fact that he would sell for less were payment made immediately make any difference. This can be seen by comparison with other debts. If an amount due to a person is payable after a certain date, even though he might remit a portion of the debt if it were paid him sooner, still in this case it is clear that the creditor is entirely immune from usury. For though it smacks of usury to take more than is due on account of delay in payment, to take less than one may be paid sooner does not smack of usury, especially on the part of him who gets less, though on the part of him who gives less on paying sooner, there seems to be some kind of usury since he sells an interval of time. Hence also in the case proposed there is no more fear of usury in connection with the buyer who, when he pays before three months, buys the cloth for less than the just value, than in connection with the seller who takes less than he may be sooner paid.

Caput 2

Ex quo etiam patet quid sit dicendum ad secundum casum. Quia si mercatores Tusciae portantes pannos de nundinis Latiniaci, ut eos usque ad tempus resurrectionis expectent, plus vendant pannos quam valeant secundum communem forum, non est dubium esse usuram. Si autem non plus quam valeant sed quantum valent, plus tamen quam acciperent si statim eis solveretur, non est usura.

Chapter 2

From this it is also clear what should be said concerning the second case. For if the merchants of Tuscany, bringing cloth from the Fair of Lagny to wait until Easter [for payment], sell the cloth for more than it is worth in the general market, here is no doubt that this is usury. But if they sell it, not at more than its worth but at its worth, yet at more than they would take for it if payment were made immediately to them, there is no usury.

Caput 3

In tertio casu similiter dicendum videtur. Quia si illi qui pecuniam mutuo cum usuris accipiunt, illam usuram recuperare volunt plus vendendo pannos quam valeant propter expectationem praedictam, non est dubium esse usuram cum manifeste tempus vendatur. Nec excusantur ex hoc quod volunt se conservare indemnes, quia nullus debet se conservare indemnem mortaliter peccando. Et licet expensas alias licite factas, puta in portatione pannorum, possint licite recuperare de eorum venditione, non tamen possunt recuperare usuras quas dederunt, cum haec fuerit iniusta datio; et praesertim cum dando usuras peccaverint tanquam occasionem peccandi usurariis praebentes, cum necessitas quae ponitur – ut scilicet honorabilius vivant et maiores mercationes faciant – non sit talis necessitas quae sufficiat ad excusandum peccatum praedictum. Patet enim a simili quia non posset quis in venditione pannorum recuperare expensas quas incaute et imprudenter fecisset.

Chapter 3

In the third case a similar reply should be made. For if those who accept money with usury wish to recover that usury by selling the cloth at more than its worth on account of the aforesaid delay, there is no doubt that this is usury since time is clearly sold. Nor are they excused by the fact that they wish to indemnify themselves, for no one should indemnify himself by committing mortal sin. And although they can in selling the cloth lawfully recover other expenses lawfully contracted, for example, the cost of transporting the cloth, still they cannot recover the usury they paid, for this was an unjust payment; especially since by paying usury they sinned in giving the usurers an occasion for sinning, since the necessary which is urged—namely that they may live more respectably and do a bigger trade—is not such a necessity as suffices to excuse the aforesaid sin. This is clear by comparison; for a man could not in selling cloth recover expenses which he might have incurred carelessly and imprudently.

Caput 4

Chapter 4

Patet etiam ex praedictis quod in quarto casu quaerebatur. Nam ille qui ad certum terminum debet, si ante terminum solvit ut ei de debito aliquid dimittatur, usuram committere videtur, quia manifeste tempus solutionis pecuniae vendit. Unde ad restitutionem tenetur. Nec excusatur per hoc quod solvendo ante terminum gravatur, vel quod ad hoc ab aliquo inducitur, quia eadem ratione possent omnes usurarii excusari.

From what has been said the query in the fourth case is also clear. For if he who owes money payable on a certain date pays before this date that a portion of the debt may be remitted to him, he seems to commit usury, inasmuch as he sells time for paying the money. Hence he is bound to restitution. Nor is he excused by the fact that he is inconvenienced by paying before the date or that he is induced to do this by someone, for all usurers could be excused on the same ground.

Haec est mea et praedictorum, scilicet electi Capuani et Hugonis cardinalis, in praedictis casibus firma et determinata sententia. Vale.

This is the firm and definite decision of myself and the aforesaid, namely, the Archbishop Elect of Capua and Cardinal Hugh, concerning the aforesaid cases. Farewell.

Opuscula III: Book 2 On Ten Commandments

Source: [Aquinas Institute Translation Project](#)
The Seventh Commandment

Quarto fraudem in mercationibus committendo, unde prohibetur Levit., *Non habebis diversas mensuras vel pondera*, Prover. *Pondus et pondus, mensura et mensura* etc. Hoc est etiam contra caupones qui miscent aquam vino. In hoc etiam prohibetur usura, Ps., *Domine quis habitabit* etc. Hoc etiam est contra campsores qui multas falsitates dicunt et committunt. Est etiam contra venditores pannorum et aliarum rerum. Sed dices forsitan, quare non possum dare pecuniam sicut equum vel domum? Dicendum quod in illis est peccatum quae bis venduntur. In domo autem duo sunt, scilicet substantia et usus, et aliud est habere domum et aliud uti domo, unde separatim possum vendere usum sine domus venditione, et ita in omnibus huiusmodi. Unde si aliqua sunt quae consistant in ipso usu tantum et usus est eorum distractio, non potest fieri id quod de domo. Denariis autem utimur consumendo et frumento destruendo, et ideo si usum vendis bis vendis.

The fourth kind of theft is fraud in buying and selling: *You shall not have diverse measures or weights* (Lev 19:35). *Diverse weights and diverse measures, both are abominable before God* (Prov 20:10). This is also directed against the keepers of wine-

shops who mix water with the wine. Usury is also forbidden: *Lord, who shall dwell in your tabernacle* etc. (Ps 14:1). This is also against money-changers who speak and commit many frauds, and against the sellers of cloth and other goods. But you may object: why can I not give money, just like a horse or a house? To this it must be said that in money the sin is that an item is sold twice. In a house there are two items: the substance and the use. It is one thing to have a house, and another to use the house. So I can sell separately the use of a house without selling the house itself. The same for such like. But for things that consist in the use alone, and the use alienates the item, the same distinction cannot be made as with a house. We use money by alienating it, and food by consuming it. Therefore if you sell the use, you are selling twice.

Quodlibet III.Q7.A2

Source: [Corpus Thomisticum](#)

ARTICULUS 2

Utrum aliquis possit licite retinere illud quod acquiritur licitis mercimoniis de pecunia usuraria

Ad secundum sic procedebatur: videtur quod quidquid aliquis de pecunia usuraria lucratus fuerit, reddere teneatur.

[67368] Quodlibet III, q. 7 a. 2 arg. Dicit enim apostolus ad Roman., XI, 16: *si radix sancta, et rami*. Ergo e converso, si radix infecta, et rami. Sed radix huius lucri est infecta et usuraria. Ergo totum est infectum et usurarium; non ergo potest licite huius lucrum retinere.

[67369] Quodlibet III, q. 7 a. 2 s. c. Sed contra, quilibet potest licite retinere id quod legitime acquisivit. Sed quod acquiritur de pecunia usuraria, interdum legitime acquiritur. Ergo licite potest retineri.

[67370] Quodlibet III, q. 7 a. 2 co. Respondeo. Dicendum, quod huius quaestionis veritas poterit apparere, si consideretur ratio quare usuram accipere sit peccatum. Non enim est peccatum solum quia est prohibitum, sed quia est contra rationem naturalem, ut etiam philosophus dicit in I politicorum. Ad cuius evidentiam considerandum, quod rerum in usum hominis venientium quaedam sunt quarum usus non est ipsius rei consumptio; et si contingat rem deteriorari vel consumi per usum, hoc est per accidens, sicut domus, vestis, liber, equus, et huiusmodi. Non enim uti libro est delere ipsum, neque uti domo est destruere ipsam. Et in talibus aliud est dare usum rei et aliud est dare substantiam rei: et propter hoc, quanto per accommodationem usus talis rei alteri conceditur, non propter hoc dominium rei transfertur; et propter hoc etiam potest vendi usus rei, dominio rei remanente apud dominum; sicut patet in conductione et locatione, qui sunt contractus liciti. Quaedam vero res sunt quarum usus nihil est aliud quam consumptio ipsarum rerum: sicut pecunia qua utimur expendendo, vinum quo utimur bibendo; et sic de aliis huiusmodi, in quibus uti re nihil aliud est quam consumere ipsam. Et ideo in talibus quando conceditur usus rei per mutuum, transfertur etiam rei dominium. Quia ergo usus rei non est separabilis ab ipsa re; quicumque vendit usum talium rerum retinendo sibi obligationem ad sortem reddendam, manifestum est quod idem vendit bis, quod est contra naturalem

iustitiam. Et ideo exigere usuram est secundum se iniustum. Tenetur ergo aliquis id quod accipit ultra sortem, restituere, quia iniuste accipit; et per consequens damna et interesse. Sed cum ipsius pecuniae usurariae non sit alius usus quam ipsa eius substantia, ratione iam dicta, patet consequenter quod ex quo pecuniam usurariam reddit, de usu pecuniae nihil reddere tenetur. Teneretur autem reddere aliquis id quod lucratus esset de domo aliena, vel de equo, vel aliquo huiusmodi, etiam postquam res huiusmodi reddidisset; quia in talibus appretiatur res et usus rei.

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[67371] Quodlibet III, q. 7 a. 2 ad arg. Ad illud ergo quod in contrarium obiicitur, dicendum, quod pecunia usuraria non se habet per modum radices ad lucrum quod de ea fit, sed solum per modum materiae. Radix enim aliquo modo habet virtutem causae activae, in quantum ministrat alimentum toti plantae; unde in humanis actibus voluntas et intentio comparantur radici, quae si perversa fuerit, opus erit perversum: non autem hoc est necessarium in eo quod est materiale; potest enim aliquis interdum malo bene uti.

De Malo Q13 A4

Source: [Corpus Thomisticum](#)

ARTICULUS 4

Quarto quaeritur utrum mutuare ad usuram sit peccatum mortale

Et videtur quod non.

[63256] De malo, q. 13 a. 4 arg. 1 Nullum enim peccatum mortale est concessum in lege divina. Sed dare mutuum ad usuram est concessum in lege divina; dicitur enim Deut. XXIII, 19: *non fenerabis fratri tuo ad usuram pecuniam, nec fruges, nec quamlibet aliam rem, sed alieno*. Ergo dare mutuum ad usuram non est peccatum mortale.

[63257] De malo, q. 13 a. 4 arg. 2 Sed dicendum, quod hoc non est concessum illi populo, sed magis permissum propter eius duritiam, sicut et libellus repudii. - Sed contra, illud quod permittitur tamquam malum non repromittitur ut praemium iustitiae: quod enim promittitur ut praemium, inducitur ut bonum et desiderandum. Sed dare mutuum ad usuram promittitur in lege Dei ut praemium iustitiae; dicitur enim Deut. cap. XXVIII, 12: *fenerabis gentibus multis, et ipse a nullo fenus accipies*. Ergo dare mutuum ad usuram non est peccatum mortale.

[63258] De malo, q. 13 a. 4 arg. 3 Praeterea, praetermittere consilium non est peccatum; quia, ut dicitur I ad Cor. VII, v. 28, mulier non peccat si nubat, quamvis consilium virginitatis praetermittat. Sed dare mutuum absque usura, ponitur inter consilia; Luc. enim VI, 27, 35, dicitur: *diligite inimicos vestros, benefacite iis qui oderunt vos, (...) et date mutuum nihil inde sperantes*; in quo prohibetur usura, ut multi exponunt. Ergo dare mutuum ad usuram non est peccatum mortale.

[63259] De malo, q. 13 a. 4 arg. 4 Praeterea, sicut homo habet dominium suae domus aut equi, ita etiam habet dominium suae pecuniae. Sed homo potest locare domum

suam aut equum pro pretio. Ergo pari ratione potest homo accipere praemium pro pecunia quam mutuatur.

[63260] De malo, q. 13 a. 4 arg. 5Praeterea, non videtur esse pactum illicitum, si aliquis ad hoc obligetur ad quod tenetur ex iure naturali; sed ex iure naturali tenetur homo ut aliquid recompenset ei qui sibi beneficium contulit. Ille autem qui pecuniam mutuatur, aliquod beneficium confert; subvenit enim necessitati indigentis. Ergo si pro hoc beneficio, aliquo certo pacto obliget eum cui mutuatur ad hoc quod aliquid sibi retribuatur, non videtur esse pactum illicitum.

[63261] De malo, q. 13 a. 4 arg. 6Praeterea, ius positivum a iure naturali derivatur, ut Tullius dicit in sua rhetorica. Sed ius civile permittit usuras. Ergo non est contra ius naturale dare mutuum ad usuras. Ergo non est peccatum.

[63262] De malo, q. 13 a. 4 arg. 7Praeterea, si dare mutuum ad usuram sit peccatum, oportet quod alicui virtuti opponatur; et cum in communicatione quadam consistat, scilicet in mutuo, videtur maxime iustitiae opponi, si peccatum sit: nam iustitia circa huiusmodi communicationes consistit, ut dicitur in V Ethic. Sed iustitiae non opponitur: non enim potest dici, quod ille qui solvit usuras, iniustum patiatur; neque enim patitur iniustum a seipso, quia nullus sibi ipsi facit iniustum, ut philosophus probat in V Ethic., neque etiam ab alio, quia nullus patitur ab alio iniustum nisi per dolum aut violentiam, quorum neutrum est in proposito; quia volens et sciens ille qui accipit mutuum, usuras solvit. Ergo nullo modo patitur iniustum; ergo nec usurarium facit iniustum; non ergo peccat.

[63263] De malo, q. 13 a. 4 arg. 8Sed dicendum, quod est ibi violentum mixtum: vult enim ille qui accipit mutuum, usuras dare quasi coactus.- Sed contra, violentum mixtum ibi habet locum ubi aliqua necessitas imminet, sicut patet in eo qui proicit merces in mare ne periclitetur navis. Sed quandoque aliqui accipiunt mutuum ad usuram absque magna necessitate. Ergo ad minus in tali casu concedere mutuum ad usuram, non est peccatum mortale.

[63264] De malo, q. 13 a. 4 arg. 9Praeterea, quilibet potest alienare illud cuius est dominus. Sed ille qui dat usuram, est dominus suae pecuniae, quam usurario dat. Ergo potest eam alienare; et ita usurarius qui recipit, potest eam licite retinere.

[63265] De malo, q. 13 a. 4 arg. 10Praeterea, in contractu mutui duae personae concurrunt, scilicet debitoris et creditoris. Sed creditor potest dimittere de eo quod sibi debetur. Ergo et debitor potest absque peccato amplius dare.

[63266] De malo, q. 13 a. 4 arg. 11Praeterea, multo gravius est occidere hominem quam accipere pretium pro pecunia mutuata. Sed occidere hominem in aliquo casu licet. Ergo multo magis dare pecuniam ad usuram in aliquo casu est licitum.

[63267] De malo, q. 13 a. 4 arg. 12Praeterea, illud ad quod homo se obligat, licite potest ab eo exigi. Sed ille qui dat usuram, ad hoc se obligavit quando mutuum accepit. Ergo licite usurarius potest exigere.

[63268] De malo, q. 13 a. 4 arg. 13Praeterea, simonia committitur quodcumque munus accipiat sive a lingua, sive a manu, sive ab obsequio. Si ergo accipere munus a manu pro pecunia mutuata, esset peccatum mortale, pari ratione etiam videretur quod etiam quodcumque obsequium aliquis acciperet pro pecunia mutuata, esset peccatum mortale: quod videtur valde durum.

[63269] De malo, q. 13 a. 4 arg. 14Praeterea, duplex est interesse. Quoddam quidem ex eo quod aliquid non adest, quia scilicet aliquis non acquisivit quod acquirere potuisset, et ad hoc interesse non obligatur aliquis. Aliud est interesse ex eo quod aliquid abest, quia scilicet aliquid subtractum est alicui de hoc quod habebat; et de tali interesse nascitur obligatio. Sed contingit quandoque quod ex pecunia mutuata aliquis damnificatur in eo quod habebat. Ergo videtur quod possit pro hoc interesse aliquid accipere absque peccato.

[63270] De malo, q. 13 a. 4 arg. 15Praeterea, laudabilius videtur concedere alicui pecuniam pro aliqua utilitate quam pro sola ostentatione. Sed quando aliquis concedit alicui pecuniam suam causa ostentationis, ut ille divitem se demonstret, potest absque peccato pretium inde accipere. Ergo multo magis, si pro aliqua necessitate pecuniam suam concedat.

[63271] De malo, q. 13 a. 4 arg. 16Praeterea, facta Christi nobis proponuntur in sacra Scriptura ut ea imitemur, secundum illud Ioan. XIII, 15: *exemplum dedi vobis, ut quemadmodum ego feci vobis, ita et vos faciatis*. Sed dominus de seipso dicit, Luc. XIX, 23: *ego veniens cum usuris utique exegissem illam*, scilicet pecuniam mutuam. Ergo exigere usuras non est peccatum.

[63272] De malo, q. 13 a. 4 arg. 17Praeterea, quicumque consentit alicui peccanti mortaliter, etiam ipse mortaliter peccat: dicitur enim Rom., I, 32, quod digni sunt morte; et non solum qui ea faciunt, sed etiam qui consentiunt facientibus. Sed ille qui accipit mutuo pecuniam ad usuras, consentit accipienti usuras. Si ergo mutuare pecuniam ad usuras est peccatum mortale, etiam accipere mutuo pecuniam sub usuris, erit peccatum mortale; quod per contrariam consuetudinem multorum bonorum falsum esse videtur.

[63273] De malo, q. 13 a. 4 arg. 18Praeterea, ille qui subministrat peccanti mortaliter, peccare videtur, sicut si quis mutuaret arma furem, vel interficere volenti. Si ergo usurarius mortaliter peccat mutuans pecuniam ad usuras, videtur quod etiam illi qui apud eos deponunt pecunias mortaliter peccent.

[63274] De malo, q. 13 a. 4 arg. 19Sed dicendum, quod si absque necessitate aliquis pecuniam accipiat mutuo sub usuris, aut apud usurarium deponat suam pecuniam mortaliter peccat; si vero ex necessitate, a peccato excusatur.- Sed contra, necessitas accipiendi mutuum sub usuris, non potest esse nisi ad evitandum aliquod damnum temporale. Sed pro nullo temporali damno debemus consentire aut materiam ministrare alterius peccato; quia plus debemus diligere animam proximi quam omnia temporalia bona. Ergo pro tali necessitate non excusantur praedicti a peccato mortali.

[63275] De malo, q. 13 a. 4 arg. 20Praeterea, maius peccatum videtur esse furtum quam dare pecuniam mutuo ad usuram; quia illud est omnino involuntarium, hoc autem est aliquo modo voluntarium, ex parte eius cuius pecunia accipitur. Sed furtum aliquando potest esse licitum, sicut patet de filiis Israel qui acceperunt ab Aegyptiis mutuo vasa quae non reddiderunt, ut dicitur Exod., XII, 35-36. Ergo multo magis mutuare pecuniam ad usuram, potest esse sine peccato.

[63276] De malo, q. 13 a. 4 s. c. 1Sed contra. Est quod Gregorius Nyssenus dicit: *malignam fenoris excogitationem si quis appellaret furtum aut homicidium, non peccabit. Nam quid refert suffosso pariete quemquam erepta possidere, an fenorum necessitate possidere illicita?* Sed homicidium et furtum est peccatum mortale. Ergo etiam dare pecuniam mutuo ad usuram, est peccatum mortale.

[63277] De malo, q. 13 a. 4 s. c. 2Praeterea, si propositum in proposito, et oppositum in opposito, ut philosophus dicit. Sed non dare pecuniam mutuo ad usuram, ducit homines ad vitam; dicitur enim Ezech., XVIII, 17, quod qui usuras non acceperit, vita vivet; et in Psalm. XIV, 5: *qui pecuniam suam non dedit ad usuram (...) hic accipiet benedictionem a domino*. Ergo accipere usuram ducit ad mortem, et aufert divinam benedictionem; est ergo peccatum mortale.

[63278] De malo, q. 13 a. 4 s. c. 3Praeterea, omne quod est contra praeceptum legis divinae, est peccatum mortale. Sed dare pecuniam ad usuram est contra praeceptum legis divinae; dicitur enim Exod., cap. XXII, 25: *si pecuniam mutuam (ad usuram) dederis populo meo pauperi qui habitat tecum, non urgebis eum quasi exactor, nec usuris opprimes*. Ergo dare pecuniam mutuo ad usuram, est peccatum mortale.

[63279] De malo, q. 13 a. 4 co. Respondeo. Dicendum quod dare pecuniam mutuo ad usuram est peccatum mortale. Nec ideo est peccatum quia est prohibitum; sed potius ideo est prohibitum, quia est secundum se peccatum; est enim contra iustitiam naturalem. Et hoc patet, si quis recte consideret usurae rationem. Dicitur enim usura ab usu, eo scilicet quod pro usu pecuniae pretium quoddam accipitur, quasi ipse usus pecuniae mutuatae vendatur. Est autem considerandum quod diversarum rerum diversus est usus. Quaedam enim sunt quarum usus est consumptio substantiae ipsarum rerum, sicut proprius usus vini est ut bibatur, et in hoc consumitur vini substantia; et similiter proprius usus tritici aut panis est ut comedatur, quod est consumptio ipsius tritici vel panis; ita etiam proprius usus pecuniae est ut expendatur pro commutatione aliarum rerum. Sunt enim inventa numismata commutationis gratia, ut philosophus dicit in VII Politic. Quaedam vero res sunt quarum usus non est consumptio substantiae ipsarum, sicut usus domus est inhabitatio; non est autem de ratione inhabitationis, quod domus diruatur; si autem contingat quod domus inhabitando in aliquo melioretur vel deterioretur, hoc est per accidens; et idem est dicendum de equo et veste, et aliis huiusmodi. Quia ergo huiusmodi res non consumuntur per usum per se loquendo, ideo seorsum potest concedi aut vendi aut res ipsa aut usus, vel simul utrumque; potest enim aliquis vendere domum, retinendo sibi usum domus ad tempus; et similiter potest aliquis vendere usum domus, retinendo sibi proprietatem et dominium domus. Sed in illis rebus quarum usus est consumptio, non est aliud usus rei quam ipsa res; unde cuicumque conceditur usus talium rerum, conceditur etiam et ipsarum rerum dominium, et e converso. Cum ergo aliquis pecuniam mutuatur sub hoc pacto quod restituatur sibi pecunia integra, et ulterius pro usu pecuniae vult certum pretium habere, manifestum est quod vendit seorsum usum pecuniae, et ipsa pecuniae substantiam. Usus autem pecuniae, ut dictum est, non est aliud quam eius substantia; unde vel vendit id quod non est, vel vendit idem bis, ipsam scilicet pecuniam, cuius usus est consumptio eius; et hoc est manifeste contra rationem iustitiae naturalis. Unde mutuare pecuniam pro usura, est secundum se peccatum mortale: et eadem ratio est de omnibus aliis rebus quarum substantia per usum consumitur; sicut patet in vino, tritico, et aliis huiusmodi.

[63280] De malo, q. 13 a. 4 ad 1 Ad primum ergo dicendum, quod accipere ad usuram ab extraneis, non fuit concessum Iudaeis quasi licitum, sed permissum, ut scilicet pro hoc non punirentur poena temporali. Cuius quidem permissionis fuit ratio, quia praeerant ad avaritiam: unde permissum fuit eis minus malum, scilicet accipere usuras a gentibus, ut vitaretur maius malum, scilicet accipere usuras a Iudaeis Deum colentibus. Sed postmodum per prophetas admoniti sunt ut totaliter ab usuris abstinerent, ut patet per auctoritates in contrarium inductas.

[63281] De malo, q. 13 a. 4 ad 2 Ad secundum dicendum, quod fenerare quandoque large accipitur pro mutuare, ut patet Eccli., XXIX, 10: *multi vero causa nequitiae non fenerati sunt*, id est non mutuaverunt. Mutuare autem pertinet ad eum qui superabundat: et ideo quod dicitur, *fenerabis*, intelligendum est, mutuabis; ut per hoc detur intelligi, quod in tantum affluerent temporalibus bonis, quod ipsi aliis possent mutuare, et a nullo mutuum indigerent accipere.

[63282] De malo, q. 13 a. 4 ad 3 Ad tertium dicendum, quod secundum superficiem litterae Evangelii potest esse sensus, quod dare mutuum sit consilium; sed si detur mutuum, quod detur absque spe usurarii lucri, hoc est praeceptum: et quantum ad primum ponitur cum consiliis. Vel potest dici, quod quaedam sunt secundum rei veritatem praecepta vel prohibitiones, quae tamen sunt supra praecepta secundum Phariseorum intellectum; sicut Matth., V, 22, super hoc praeceptum: *non occides*, quod Pharisei intelligebant de homicidio exteriori. Dominus superaddit: *qui irascitur fratri suo, reus erit iudicio*. Et hoc modo quantum ad Phariseos existimantes non esse

prohibitum universaliter pecuniam ad usuram dari, ponitur inter consilia ut detur mutuum absque spe usurarii lucri. Vel potest dici, quod non loquitur ibi de spe usurarii lucri, sed de spe quae ponitur in homine. Non enim debemus bona nostra facere, sperantes ab homine retributionem, sed a solo Deo.

[63283] De malo, q. 13 a. 4 ad 4Ad quartum dicendum, quod quidam dicunt, quod domus et equus deteriorantur per usum, et ideo pro recompensatione potest aliquid accipi; pecunia autem non deterioratur. Sed ista ratio nulla est, quia secundum hoc aliquis non posset iuste accipere maius pretium pro domo sua locata, quam domus inde deterioretur. Est ergo dicendum, quod venditur ipse usus domus licite; non autem pecuniae, propter rationem supradictam.

[63284] De malo, q. 13 a. 4 ad 5Ad quintum dicendum, quod, sicut philosophus dicit in IX Ethic., recompensatio beneficii accepti aliter fit in amicitia utilis et aliter in amicitia honesti: quia in amicitia utilis est mensuranda recompensatio secundum utilitatem quam consecutus est ille qui beneficium accipit; in amicitia autem honesti, est recompensatio mensuranda secundum affectum eius qui beneficium dedit. Obligare autem ex certo pacto ad beneficium recompensandum non competit amicitiae honesti: quia in tali amicitia amicus benefaciens affectum amici inclinat ut sibi gratis et liberaliter recompenset cum opportunitas fuerit. Sed obligare certo pacto ad recompensandum beneficium, est proprium in amicitia utilis: et ideo non debet obligari ad plus reddendum quam accepit. Non autem aliquis aliquid plus accepit quam ipsam quantitatem pecuniae, quia eius usus, qui est pecuniae consumptivus, non est aliud quam ipsa pecunia: et ideo non debet ad plus obligari quam ad restituendum pecuniam.

[63285] De malo, q. 13 a. 4 ad 6Ad sextum dicendum, quod ius positivum principaliter intendit bonum commune multitudinis. Contingit autem quandoque quod si impediatur aliquod malum, provenit maximum detrimentum communitati: et ideo quandoque ius positivum permittit aliquid dispensative, non quia sit iustum id fieri, sed ne communitas maius incommodum patiatur; sicut etiam Deus aliqua permittit mala fieri in mundo, ne impediantur bona quae ex his malis ipse elicere novit. Et hoc modo ius positivum permisit usuras propter multas commoditates quas interdum aliqui consequuntur ex pecunia mutuata, licet sub usuris.

[63286] De malo, q. 13 a. 4 ad 7Ad septimum dicendum, quod iste qui dat usuram, patitur iniustum non a seipso sed ab usurario: qui licet non inferat ei violentiam absolutam, infert tamen ei quamdam violentiam mixtam; quia scilicet necessitatem habenti accipere mutuum, gravem conditionem imponit, ut scilicet plus reddat quam sibi praestetur. Et est simile si quis alicui in necessitate constituto venderet rem aliquam multo amplius quam valeret: esset enim iniusta venditio, sicut et usurarii mutuatio est iniusta.

[63287] De malo, q. 13 a. 4 ad 8Ad octavum dicendum, quod duplex est necessarium, ut dicitur in V Metaph. Quoddam quidem sine quo res non potest esse, sicut cibus est necessarium; quoddam vero est necessarium sine quo res quidem potest esse, non tamen ita bene et commode: et secundum hoc omnia utilia necessaria dicuntur. Semper autem ille qui mutuum accipit, patitur necessitatem vel primo vel secundo modo.

[63288] De malo, q. 13 a. 4 ad 9Ad nonum dicendum, quod ille qui dat pecuniam suam usurario, non dat simpliciter voluntarius, sed quodammodo coactus, ut dictum est.

[63289] De malo, q. 13 a. 4 ad 10Ad decimum dicendum, quod sicut creditor licite potest minus accipere sua propria voluntate, ita etiam debitor potest sua propria voluntate amplius dare et ille cui dat licite recipere; sed si hoc deducatur in pactum mutui, pactum est illicitum, et illicita est acceptio.

[63290] De malo, q. 13 a. 4 ad 11Ad undecimum dicendum, quod occidere non est communiter contra Deum, ut nec mutuare; et utrumque potest bene et male fieri: sed occidere innocentem, importat determinationem mali, et hoc nunquam potest bene fieri, sicut nec dare mutuum ad usuram.

[63291] De malo, q. 13 a. 4 ad 12Ad duodecimum dicendum, quod quando obligatio est licita, licite potest exigi ab homine id ad quod se obligavit; sed ipsa obligatio usuraria est naturaliter iniusta: unde non potest usurarius licite exigere id ad quod alium illicite obligavit.

[63292] De malo, q. 13 a. 4 ad 13Ad decimumtertium dicendum, quod munus aliquod vel a manu vel a lingua vel ab obsequio potest usurarius sperare ex mutuo quod concedit, dupliciter. Uno modo quasi debitum ex quadam obligatione tacita vel expressa: et sic quodcumque munus speret, illicite sperat. Alio modo potest aliquod munus sperare, non quasi debitum, sed quasi gratuitum et absque obligatione praestandum, et sic licite potest ille qui mutuatur sperare aliquod munus ab eo cui mutuatur; sicut qui facit servitium alicui, confidit de eo ut amicabilem suo tempore servitium faciat. Alia tamen ratio est de simoniacis et de usurariis: quia simoniacus non dat id quod est suum, sed id quod est Christi; et ideo non debet sperare aliquam recompensationem sibi faciendam, sed solum honorem Christi et utilitatem Ecclesiae: sed usurarius nihil alteri praestat nisi quod suum est; unde potest aliquam amicabilem recompensationem sperare per modum praedictum.

[63293] De malo, q. 13 a. 4 ad 14Ad decimumquartum dicendum, quod ex pecunia mutuata potest ille qui mutuatur, incurrere damnum rei iam habitae dupliciter. Uno modo, ex quo non redditur sibi pecunia statuto termino; et in tali casu ille qui mutuum accepit, tenetur ad interesse. Alio modo infra tempus deputatum; et tunc non tenetur ad interesse ille qui mutuum accepit. Debebat enim ille qui pecuniam mutuavit, sibi cavisse ne detrimentum incurreret. Nec ille qui mutuo accepit, debet damnum incurrere de stultitia mutuantis. Est etiam simile in emptione. Qui enim emit rem aliquam, tantum pro ea iuste dat quantum valet; non autem quantum ille qui vendit, ex eius carentia damnificatur.

[63294] De malo, q. 13 a. 4 ad 15Ad decimumquintum dicendum, quod sicut philosophus dicit in I Politic., duplex usus potest esse alicuius rei: unus proprius et principalis, alius secundarius et communis. Sicut calceamenti proprius et principalis usus est calceatio, secundarius autem commutatio. Pecuniae autem e converso principalis usus est commutatio; propter hanc enim pecunia facta est: secundarius autem usus pecuniae potest esse quicumque alius, puta quod ponatur in pignore, vel quod ostentetur. Commutatio autem est usus quasi consumens substantiam rei commutatae, in quantum facit eam abesse ab eo qui commutat. Et ideo si quis pecuniam suam alteri concedat ad usum commutationis, qui est proprius pecuniae, et pro hoc usu pretium aliud quaerat ultra sortem, erit contra iustitiam; si vero aliquis concedat alteri pecuniam suam ad usum alium quo pecunia non consumitur, erit eadem ratio quae est de rebus illis quae ipso usu non consumuntur, quae licite locantur et conducuntur. Unde si quis pecuniam signatam in sacculo concedat alicui ad hoc quod ponat eam in pignore, et exinde pretium accipiat, non est usura; quia non est ibi contractus mutui, sed magis locatio et conductio. Et eadem est ratio, si quis concedat alteri pecuniam ad usum ostentationis: sicut et converso si quis concedit alteri calceamenta ad usum commutationis, et ex hoc pretium quaereret ultra calceorum valorem, esset usura.

[63295] De malo, q. 13 a. 4 ad 16Ad decimumsextum dicendum, quod usurae ibi metaphorice dicuntur superexcrementariae spiritualium bonorum, quas Deus requirit a nobis propter nostram utilitatem. Ex metaphoricis autem locutionibus non potest argumentatio trahi.

[63296] De malo, q. 13 a. 4 ad 17 Ad decimumseptimum dicendum, quod, aliud est consentire alicui in malitia, aliud est uti malitia alicuius ad bonum. Ille enim alicui in malitia consentit cui placet ut ille malitiam exercent, et ad hoc forte eum inducit: et hoc semper est peccatum. Utitur autem malitia alicuius qui hoc quod aliquis malum facit, retorquet ad aliquod bonum; et sic etiam Deus utitur peccatis hominum, ex eis eliciens aliquod bonum. Unde et homini licet uti peccato alterius in bonum. Et hoc patet per Augustinum qui Publicolae quaerenti utrum liceret uti iuramento eius qui per falsos deos iurat, in quo manifeste peccat, respondit, quod qui utitur fide illius quem constat iurasse per deos falsos, et hoc non ad malum, sed ad bonum, non peccato illius se associat, quo per Daemones iuravit, sed pacto bono eius, qui fidem servavit. Si cui tamen placeret quod alius per falsos deos iuraret, et ad hoc eum induceret, peccaret. Similiter dicendum est in proposito, quod si aliquis propter aliquod bonum utatur malitia usurarii, accipiens ab eo mutuum ad usuram, non peccat; si vero persuaderet quod mutuaret suam pecuniam ad usuram ei qui mutuare ad usuram paratus non esset, absque dubio in omni casu peccaret, tamquam peccanti consentiens.

[63297] De malo, q. 13 a. 4 ad 18 Ad decimumoctavum dicendum, quod si quis ea intentione pecuniam alicui usurario committeret, ut exinde lucrum usurarium quaereret, absque dubio peccaret tamquam consentiens in peccatum. Et idem videtur dicendum de eo qui concedit pecuniam suam scienter ei de quo credit quod utatur ea ad usurarium lucrum, quod alias exercere non posset. Si vero aliquis pecuniam suam usurario tradat alias usuras exercenti, non ut ille lucretur, sed propter suam necessitatem, magis utitur malitia eius, quam in peccatum ipsius consentiat vel materiam peccandi ei tradat; et ideo hoc absque peccato fieri potest.

[63298] De malo, q. 13 a. 4 ad 19 Ad decimumnonum dicendum, quod pro nullo incommodo corporali vitando debet homo consentire in peccatum alterius; sed tamen pro aliquo incommodo vitando potest homo licite uti malitia alterius, vel materiam ei non subtrahere, sed praebere: sicut si latro aliquem iugulare vellet, et ad vitandum mortis periculum aliquis latroni thesaurum suum diripiendum detegeret, non peccaret, exemplo illorum decem virorum, qui dixerunt ad Ismael: *noli occidere nos, quia habemus thesauros in agro*, ut habetur Ierem. cap. XLI, 8.

[63299] De malo, q. 13 a. 4 ad 20 Ad vicesimum dicendum, quod hoc quod filii Israel vasa mutuo accepta asportaverunt non fuit furtum, quia res illae in eorum dominium transierunt auctoritate eius qui est dominus omnium.

ST II.II.Q78

Source: [Dominican House of Studies](#)

St. Thomas Aquinas

The Summa Theologica

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Translated by

Fathers of the English Dominican Province

OF THE SIN OF USURY (FOUR ARTICLES)

Deinde considerandum est de peccato usurae, quod committitur in mutuis. Et circa hoc quaeruntur quatuor.	We must now consider the sin of usury, which is committed in loans: and under this head there are four points of inquiry:
Primo, utrum sit peccatum accipere pecuniam in pretium pro pecunia mutuata, quod est accipere usuram.	(1) Whether it is a sin to take money as a price for money lent, which is to receive usury?
Secundo, utrum liceat pro eodem quamcumque utilitatem accipere quasi in recompensationem mutui.	(2) Whether it is lawful to lend money for any other kind of consideration, by way of payment for the loan?
Tertio, utrum aliquis restituere teneatur id quod de pecunia usuraria iusto lucro lucratus est.	(3) Whether a man is bound to restore just gains derived from money taken in usury?
Quarto, utrum liceat accipere mutuo pecuniam sub usura.	(4) Whether it is lawful to borrow money under a condition of usury?

ARTICLE 1: WHETHER IT IS A SIN TO TAKE USURY FOR MONEY LENT?

Ad primum sic proceditur. Videtur quod accipere usuram pro pecunia mutuata non sit peccatum. Nullus enim peccat ex hoc quod sequitur exemplum Christi. Sed dominus de seipso dicit, Luc. XIX, ego veniens cum usuris exegissem illam, scilicet pecuniam mutuatam. Ergo non est peccatum accipere usuram pro mutuo pecuniae.	Objection 1: It would seem that it is not a sin to take usury for money lent. For no man sins through following the example of Christ. But Our Lord said of Himself (Lk. 19:23): "At My coming I might have exacted it," i.e. the money lent, "with usury." Therefore it is not a sin to take usury for lending money.
Praeterea, sicut dicitur in Psalm., lex domini immaculata, quia scilicet peccatum prohibet. Sed in lege divina conceditur aliqua usura, secundum illud Deut. XXIII, non faenerabis fratri tuo ad usuram pecuniam, nec fruges nec quamlibet aliam rem, sed alieno. Et, quod plus est, etiam in praemium repromittitur pro lege servata, secundum illud Deut. XXVIII, faenerabis	Objection 2: Further, according to Ps. 18:8, "The law of the Lord is unspotted," because, to wit, it forbids sin. Now usury of a kind is allowed in the Divine law, according to Dt. 23:19,20: "Thou shalt not fenerate to thy brother money, nor corn, nor any other thing, but to the stranger": nay more, it is even promised as a reward for the observance of the Law, according

gentibus multis; et ipse a nullo faenus accipies. Ergo accipere usuram non est peccatum.

to Dt. 28:12: “Thou shalt fenerate* to many nations, and shalt not borrow of any one.” [*Faeneraberis’—“Thou shalt lend upon usury.’ The Douay version has simply ‘lend.’ The objection lays stress on the word ‘faeneraberis’: hence the necessity of rendering it by ‘fenerate.’] Therefore it is not a sin to take usury.

Praeterea, in rebus humanis determinatur iustitia per leges civiles. Sed secundum eas conceditur usuras accipere. Ergo videtur non esse illicitum.

Objection 3: Further, in human affairs justice is determined by civil laws. Now civil law allows usury to be taken. Therefore it seems to be lawful.

Praeterea, praetermittere consilia non obligat ad peccatum. Sed Luc. VI inter alia consilia ponitur, date mutuum, nihil inde sperantes. Ergo accipere usuram non est peccatum.

Objection 4: Further, the counsels are not binding under sin. But, among other counsels we find ([Lk. 6:35](#)): “Lend, hoping for nothing thereby.” Therefore it is not a sin to take usury.

Praeterea, pretium accipere quo eo quod quis facere non tenetur, non videtur esse secundum se peccatum. Sed non in quolibet casu tenetur pecuniam habens eam proximo mutuare. Ergo licet ei aliquando pro mutuo accipere pretium.

Objection 5: Further, it does not seem to be in itself sinful to accept a price for doing what one is not bound to do. But one who has money is not bound in every case to lend it to his neighbor. Therefore it is lawful for him sometimes to accept a price for lending it.

Praeterea, argentum monetatum, et in vasa formatum, non differt specie. Sed licet accipere pretium pro vasis argenteis accommodatis. Ergo etiam licet accipere pretium pro mutuo argenti monetati. Usura ergo non est secundum se peccatum.

Objection 6: Further, silver made into coins does not differ specifically from silver made into a vessel. But it is lawful to accept a price for the loan of a silver vessel. Therefore it is also lawful to accept a price for the loan of a silver coin. Therefore usury is not in itself a sin.

Praeterea, quilibet potest licite accipere rem quam ei dominus rei voluntarie tradit. Sed ille qui accipit mutuum voluntarie tradit usuram. Ergo ille qui mutuatur licite potest accipere.

Objection 7: Further, anyone may lawfully accept a thing which its owner freely gives him. Now he who accepts the loan, freely gives the usury. Therefore he who lends may lawfully take the usury.

Sed contra est quod dicitur Exod. XXII, si pecuniam mutuam dederis populo meo

On the contrary, It is written ([Ex. 22:25](#)): “If thou lend money to any of thy people that is poor, that dwelleth with

pauperi qui habitat tecum, non urgebis
eum quasi exactor, nec usuris opprimes.

thee, thou shalt not be hard upon them as
an extortioner, nor oppress them with
usuries."

Respondeo dicendum quod accipere
usuram pro pecunia mutuata est
secundum se iniustum, quia venditur id
quod non est, per quod manifeste
inaequalitas constituitur, quae iustitiae
contrariatur. Ad cuius evidentiam,
sciendum est quod quaedam res sunt
quarum usus est ipsarum rerum
consumptio, sicut vinum consumimus eo
utendo ad potum, et triticum consumimus
eo utendo ad cibum. Unde in talibus non
debet seorsum computari usus rei a re
ipsa, sed cuicumque conceditur usus, ex
hoc ipso conceditur res. Et propter hoc in
talibus per mutuum transfertur dominium.
Si quis ergo seorsum vellet vendere vinum
et seorsum vellet vendere usum vini,
venderet eandem rem bis, vel venderet id
quod non est. Unde manifeste per
iniustitiam peccaret. Et simili ratione,
iniustitiam committit qui mutuatur vinum
aut triticum petens sibi duas
recompensationes, unam quidem
restitutionem aequalis rei, aliam vero
pretium usus, quod usura dicitur.

I answer that, To take usury for money
lent is unjust in itself, because this is to
sell what does not exist, and this evidently
leads to inequality which is contrary to
justice. In order to make this evident, we
must observe that there are certain things
the use of which consists in their
consumption: thus we consume wine
when we use it for drink and we consume
wheat when we use it for food. Wherefore
in such like things the use of the thing
must not be reckoned apart from the
thing itself, and whoever is granted the
use of the thing, is granted the thing itself
and for this reason, to lend things of this
kind is to transfer the ownership.
Accordingly if a man wanted to sell wine
separately from the use of the wine, he
would be selling the same thing twice, or
he would be selling what does not exist,
wherefore he would evidently commit a
sin of injustice. In like manner he commits
an injustice who lends wine or wheat, and
asks for double payment, viz. one, the
return of the thing in equal measure, the
other, the price of the use, which is called
usury.

Quaedam vero sunt quorum usus non est
ipsa rei consumptio, sicut usus domus est
inhabitatio, non autem dissipatio. Et ideo
in talibus seorsum potest utrumque
concedi, puta cum aliquis tradit alteri
dominium domus, reservato sibi usu ad
aliquod tempus; vel e converso cum quis
concedit alicui usum domus, reservato sibi
eius dominio. Et propter hoc licite potest
homo accipere pretium pro usu domus, et
praeter hoc petere domum commodatam,
sicut patet in conductione et locatione
domus.

On the other hand, there are things the
use of which does not consist in their
consumption: thus to use a house is to
dwell in it, not to destroy it. Wherefore in
such things both may be granted: for
instance, one man may hand over to
another the ownership of his house while
reserving to himself the use of it for a
time, or vice versa, he may grant the use
of the house, while retaining the
ownership. For this reason a man may
lawfully make a charge for the use of his
house, and, besides this, revendicate the
house from the person to whom he has

	granted its use, as happens in renting and letting a house.
Pecunia autem, secundum philosophum, in V Ethic. et in I Polit., principaliter est inventa ad commutationes faciendas, et ita proprius et principalis pecuniae usus est ipsius consumptio sive distractio, secundum quod in commutationes expenditur. Et propter hoc secundum se est illicitum pro usu pecuniae mutuatae accipere pretium, quod dicitur usura. Et sicut alia iniuste acquisita tenetur homo restituere, ita pecuniam quam per usuram accepit.	Now money, according to the Philosopher (Ethic. v, 5; Polit. i, 3) was invented chiefly for the purpose of exchange: and consequently the proper and principal use of money is its consumption or alienation whereby it is sunk in exchange. Hence it is by its very nature unlawful to take payment for the use of money lent, which payment is known as usury: and just as a man is bound to restore other ill-gotten goods, so is he bound to restore the money which he has taken in usury.
Ad primum ergo dicendum quod usura ibi metaphorice accipitur pro superexcrementia bonorum spiritualium, quam exigit Deus volens ut in bonis acceptis ab eo semper proficiamus. Quod est ad utilitatem nostram, non eius.	Reply to Objection 1: In this passage usury must be taken figuratively for the increase of spiritual goods which God exacts from us, for He wishes us ever to advance in the goods which we receive from Him: and this is for our own profit not for His.
Ad secundum dicendum quod Iudaeis prohibitum fuit accipere usuram a fratribus suis, scilicet Iudaeis, per quod datur intelligi quod accipere usuram a quocumque homine est simpliciter malum; debemus enim omnem hominem habere quasi proximum et fratrem, praecipue in statu Evangelii, ad quod omnes vocantur. Unde in Psalm. absolute dicitur, qui pecuniam suam non dedit ad usuram; et Ezech. XVIII, qui usuram non acceperit. Quod autem ab extraneis usuram acciperent, non fuit eis concessum quasi licitum, sed permissum ad maius malum vitandum, ne scilicet a Iudaeis, Deum colentibus, usuras acciperent, propter avaritiam, cui dediti erant, ut habetur Isaiae LVI.	Reply to Objection 2: The Jews were forbidden to take usury from their brethren, i.e. from other Jews. By this we are given to understand that to take usury from any man is evil simply, because we ought to treat every man as our neighbor and brother, especially in the state of the Gospel, whereto all are called. Hence it is said without any distinction in Ps. 14:5: "He that hath not put out his money to usury," and (Ezech. 18:8): "Who hath not taken usury [*Vulg.: 'If a man . . . hath not lent upon money, nor taken any increase . . . he is just.']. They were permitted, however, to take usury from foreigners, not as though it were lawful, but in order to avoid a greater evil, lest, to wit, through avarice to which they were prone according to Is. 56:11, they should take

	usury from the Jews who were worshippers of God.
Quod autem in praemium promittitur, faenerabis gentibus multis etc., faenus ibi large accipitur pro mutuo, sicut et Eccli. XXIX dicitur, multi non causa nequitiae non faenerati sunt, idest non mutuaverunt. Promittitur ergo in praemium Iudaeis abundantia divitiarum, ex qua contingit quod aliis mutuare possint.	Where we find it promised to them as a reward, "Thou shalt fenerate to many nations," etc., fenerating is to be taken in a broad sense for lending, as in Ecclus. 29:10, where we read: "Many have refused to fenerate, not out of wickedness," i.e. they would not lend. Accordingly the Jews are promised in reward an abundance of wealth, so that they would be able to lend to others.
Ad tertium dicendum quod leges humanae dimittunt aliqua peccata impunita propter conditiones hominum imperfectorum, in quibus multae utilitates impedirentur si omnia peccata districte prohiberentur poenis adhibitis. Et ideo usuras lex humana concessit, non quasi existimans eas esse secundum iustitiam, sed ne impedirentur utilitates multorum. Unde in ipso iure civili dicitur quod res quae usu consumuntur neque ratione naturali neque civili recipiunt usumfructum, et quod senatus non fecit earum rerum usumfructum, nec enim poterat; sed quasi usumfructum constituit, concedens scilicet usuras. Et philosophus, naturali ratione ductus, dicit, in I Polit., quod usuraria acquisitio pecuniarum est maxime praeter naturam.	Reply to Objection 3: Human laws leave certain things unpunished, on account of the condition of those who are imperfect, and who would be deprived of many advantages, if all sins were strictly forbidden and punishments appointed for them. Wherefore human law has permitted usury, not that it looks upon usury as harmonizing with justice, but lest the advantage of many should be hindered. Hence it is that in civil law [*Inst. II, iv, de Usufructu] it is stated that "those things according to natural reason and civil law which are consumed by being used, do not admit of usufruct," and that "the senate did not (nor could it) appoint a usufruct to such things, but established a quasi-usufruct," namely by permitting usury. Moreover the Philosopher, led by natural reason, says (Polit. i, 3) that "to make money by usury is exceedingly unnatural."
Ad quartum dicendum quod dare mutuum non semper tenetur homo, et ideo quantum ad hoc ponitur inter consilia. Sed quod homo lucrum de mutuo non quaerat, hoc cadit sub ratione praecepti. Potest tamen dici consilium per comparisonem ad dicta Phariseorum, qui putabant usuram aliquam esse licitam, sicut et dilectio inimicorum est consilium. Vel	Reply to Objection 4: A man is not always bound to lend, and for this reason it is placed among the counsels. Yet it is a matter of precept not to seek profit by lending: although it may be called a matter of counsel in comparison with the maxims of the Pharisees, who deemed some kinds of usury to be lawful, just as love of one's enemies is a matter of

loquitur ibi non de spe usurarii lucri, sed de spe quae ponitur in homine. Non enim debemus mutuum dare, vel quodcumque bonum facere, propter spem hominis, sed propter spem Dei.

counsel. Or again, He speaks here not of the hope of usurious gain, but of the hope which is put in man. For we ought not to lend or do any good deed through hope in man, but only through hope in God.

Ad quintum dicendum quod ille qui mutuare non tenetur recompensationem potest accipere eius quod fecit, sed non amplius debet exigere. Recompensatur autem sibi secundum aequalitatem iustitiae si tantum ei reddatur quantum mutuavit. Unde si amplius exigit pro usufructu rei quae alium usum non habet nisi consumptionem substantiae, exigit pretium eius quod non est. Et ita est iniusta exactio.

Reply to Objection 5: He that is not bound to lend, may accept repayment for what he has done, but he must not exact more. Now he is repaid according to equality of justice if he is repaid as much as he lent. Wherefore if he exacts more for the usufruct of a thing which has no other use but the consumption of its substance, he exacts a price of something non-existent: and so his exaction is unjust.

Ad sextum dicendum quod usus principalis vasorum argenteorum non est ipsa eorum consumptio, et ideo usus eorum potest vendi licite, servato dominio rei. Usus autem principalis pecuniae argenteae est distractio pecuniae in commutationes. Unde non licet eius usum vendere cum hoc quod aliquis velit eius restitutionem quod mutuo dedit. Sciendum tamen quod secundarius usus argenteorum vasorum posset esse commutatio. Et talem usum eorum vendere non liceret. Et similiter potest esse aliquis alius secundarius usus pecuniae argenteae, ut puta si quis concederet pecuniam signatam ad ostentationem, vel ad ponendum loco pignoris. Et talem usum pecuniae licite homo vendere potest.

Reply to Objection 6: The principal use of a silver vessel is not its consumption, and so one may lawfully sell its use while retaining one's ownership of it. On the other hand the principal use of silver money is sinking it in exchange, so that it is not lawful to sell its use and at the same time expect the restitution of the amount lent. It must be observed, however, that the secondary use of silver vessels may be an exchange, and such use may not be lawfully sold. In like manner there may be some secondary use of silver money; for instance, a man might lend coins for show, or to be used as security.

Ad septimum dicendum quod ille qui dat usuram non simpliciter voluntarie dat, sed cum quadam necessitate, inquantum indiget pecuniam accipere mutuo, quam ille qui habet non vult sine usura mutuare.

Reply to Objection 7: He who gives usury does not give it voluntarily simply, but under a certain necessity, in so far as he needs to borrow money which the owner is unwilling to lend without usury.

Ad secundum sic proceditur. Videtur quod aliquis possit pro pecunia mutuata aliquam aliam commoditatem expetere.

Unusquisque enim licite potest suae indemnitati consulere. Sed quandoque damnum aliquis patitur ex hoc quod pecuniam mutuatur. Ergo licitum est ei, supra pecuniam mutuata, aliquid aliud pro damno expetere, vel etiam exigere

Objection 1: It would seem that one may ask for some other kind of consideration for money lent. For everyone may lawfully seek to indemnify himself. Now sometimes a man suffers loss through lending money. Therefore he may lawfully ask for or even exact something else besides the money lent.

Praeterea, unusquisque tenetur ex quodam debito honestatis aliquid recompensare ei qui sibi gratiam fecit, ut dicitur in V Ethic. Sed ille qui alicui in necessitate constituto pecuniam mutuatur, gratiam facit, unde et gratiarum actio ei debetur. Ergo ille qui recipit tenetur naturali debito aliquid recompensare. Sed non videtur esse illicitum obligare se ad aliquid ad quod quis ex naturali iure tenetur. Ergo non videtur esse illicitum si aliquis, pecuniam alteri mutuans, in obligationem deducat aliquam recompensationem.

Objection 2: Further, as stated in Ethic. v, 5, one is in duty bound by a point of honor, to repay anyone who has done us a favor. Now to lend money to one who is in straits is to do him a favor for which he should be grateful. Therefore the recipient of a loan, is bound by a natural debt to repay something. Now it does not seem unlawful to bind oneself to an obligation of the natural law. Therefore it is not unlawful, in lending money to anyone, to demand some sort of compensation as condition of the loan.

Praeterea, sicut est quoddam munus a manu, ita est munus a lingua, et ab obsequio, ut dicit Glossa Isaiae XXXIII, beatus qui excutit manus suas ab omni munere. Sed licet accipere servitium, vel etiam laudem, ab eo cui quis pecuniam mutuavit. Ergo, pari ratione, licet quodcumque aliud munus accipere.

Objection 3: Further, just as there is real remuneration, so is there verbal remuneration, and remuneration by service, as a gloss says on Is. 33:15, "Blessed is he that shaketh his hands from all bribes [*Vulg.: 'Which of you shall dwell with everlasting burnings? . . . He that shaketh his hands from all bribes.']. Now it is lawful to accept service or praise from one to whom one has lent money. Therefore in like manner it is lawful to accept any other kind of remuneration.

Praeterea, eadem videtur esse comparatio dati ad datum et mutuati ad mutuatum. Sed licet pecuniam accipere pro alia pecunia

Objection 4: Further, seemingly the relation of gift to gift is the same as of loan to loan. But it is lawful to accept

data. Ergo licet accipere recompensationem alterius mutui pro pecunia mutuata.	money for money given. Therefore it is lawful to accept repayment by loan in return for a loan granted.
Praeterea, magis a se pecuniam alienat qui, eam mutuando, dominium transfert, quam qui eam mercatori vel artifici committit. Sed licet lucrum accipere de pecunia commissa mercatori vel artifici. Ergo licet etiam lucrum accipere de pecunia mutuata.	Objection 5: Further, the lender, by transferring his ownership of a sum of money removes the money further from himself than he who entrusts it to a merchant or craftsman. Now it is lawful to receive interest for money entrusted to a merchant or craftsman. Therefore it is also lawful to receive interest for money lent.
Praeterea, pro pecunia mutuata potest homo pignus accipere, cuius usus posset aliquo pretio vendi, sicut cum impignoratur ager vel domus quae inhabitatur. Ergo licet aliquod lucrum habere de pecunia mutuata.	Objection 6: Further, a man may accept a pledge for money lent, the use of which pledge he might sell for a price: as when a man mortgages his land or the house wherein he dwells. Therefore it is lawful to receive interest for money lent.
Praeterea, contingit quandoque quod aliquis carius vendit res suas ratione mutui; aut vilius emit quod est alterius; vel etiam pro dilatione pretium auget, vel pro acceleratione diminuit, in quibus omnibus videtur aliqua recompensatio fieri quasi pro mutuo pecuniae. Hoc autem non manifeste apparet illicitum. Ergo videtur licitum esse aliquod commodum de pecunia mutuata expectare, vel etiam exigere.	Objection 7: Further, it sometimes happens that a man raises the price of his goods under guise of loan, or buys another's goods at a low figure; or raises his price through delay in being paid, and lowers his price that he may be paid the sooner. Now in all these cases there seems to be payment for a loan of money: nor does it appear to be manifestly illicit. Therefore it seems to be lawful to expect or exact some consideration for money lent.
Sed contra est quod Ezech. XVIII dicitur, inter alia quae ad virum iustum requiruntur, usuram et superabundantiam non acceperit.	On the contrary, Among other conditions requisite in a just man it is stated (Ezech. 18:17) that he "hath not taken usury and increase."
Respondeo dicendum quod, secundum philosophum, in IV Ethic., omne illud pro pecunia habetur cuius pretium potest pecunia mensurari. Et ideo sicut si aliquis pro pecunia mutuata, vel quacumque alia re quae ex ipso usu consumitur, pecuniam	I answer that, According to the Philosopher (Ethic. iv, 1), a thing is reckoned as money "if its value can be measured by money." Consequently, just as it is a sin against justice, to take money, by tacit or express agreement, in

accipit ex pacto tacito vel expresso, peccat contra iustitiam, ut dictum est; ita etiam quicumque ex pacto tacito vel expresso quodcumque aliud acceperit cuius pretium pecunia mensurari potest, simile peccatum incurrit. Si vero accipiat aliquid huiusmodi non quasi exigens, nec quasi ex aliqua obligatione tacita vel expressa, sed sicut gratuitum donum, non peccat, quia etiam antequam pecuniam mutuasset, licite poterat aliquod donum gratis accipere, nec peioris conditionis efficitur per hoc quod mutuavit.

return for lending money or anything else that is consumed by being used, so also is it a like sin, by tacit or express agreement to receive anything whose price can be measured by money. Yet there would be no sin in receiving something of the kind, not as exacting it, nor yet as though it were due on account of some agreement tacit or expressed, but as a gratuity: since, even before lending the money, one could accept a gratuity, nor is one in a worse condition through lending.

Recompensationem vero eorum quae pecunia non mensurantur licet pro mutuo exigere, puta benevolentiam et amorem eius qui mutuavit, vel aliquid huiusmodi.

On the other hand it is lawful to exact compensation for a loan, in respect of such things as are not appreciated by a measure of money, for instance, benevolence, and love for the lender, and so forth.

Ad primum ergo dicendum quod ille qui mutuum dat potest absque peccato in pactum deducere cum eo qui mutuum accipit recompensationem damni per quod subtrahitur sibi aliquid quod debet habere, hoc enim non est vendere usum pecuniae, sed damnum vitare. Et potest esse quod accipiens mutuum maius damnum evitet quam dans incurret, unde accipiens mutuum cum sua utilitate damnum alterius recompensat. Recompensationem vero damni quod consideratur in hoc quod de pecunia non lucratur, non potest in pactum deducere, quia non debet vendere id quod nondum habet et potest impediri multipliciter ab habendo.

Reply to Objection 1: A lender may without sin enter an agreement with the borrower for compensation for the loss he incurs of something he ought to have, for this is not to sell the use of money but to avoid a loss. It may also happen that the borrower avoids a greater loss than the lender incurs, wherefore the borrower may repay the lender with what he has gained. But the lender cannot enter an agreement for compensation, through the fact that he makes no profit out of his money: because he must not sell that which he has not yet and may be prevented in many ways from having.

Ad secundum dicendum quod recompensatio alicuius beneficii dupliciter fieri potest. Uno quidem modo, ex debito iustitiae, ad quod aliquis ex certo pacto obligari potest. Et hoc debitum attenditur secundum quantitatem beneficii quod quis accepit. Et ideo ille qui accipit mutuum pecuniae, vel cuiuscumque similis rei cuius

Reply to Objection 2: Repayment for a favor may be made in two ways. In one way, as a debt of justice; and to such a debt a man may be bound by a fixed contract; and its amount is measured according to the favor received. Wherefore the borrower of money or any such thing the use of which is its

usus est eius consumptio, non tenetur ad plus recompensandum quam mutuo acceperit. Unde contra iustitiam est si ad plus reddendum obligetur. Alio modo tenetur aliquis ad recompensandum beneficium ex debito amicitiae, in quo magis consideratur affectus ex quo aliquis beneficium contulit quam etiam quantitas eius quod fecit. Et tali debito non competit civilis obligatio, per quam inducitur quaedam necessitas, ut non spontanea recompensatio fiat.

consumption is not bound to repay more than he received in loan: and consequently it is against justice if he be obliged to pay back more. In another way a man's obligation to repayment for favor received is based on a debt of friendship, and the nature of this debt depends more on the feeling with which the favor was conferred than on the greatness of the favor itself. This debt does not carry with it a civil obligation, involving a kind of necessity that would exclude the spontaneous nature of such a repayment.

Ad tertium dicendum quod si aliquis ex pecunia mutuata expectet vel exigat, quasi per obligationem pacti taciti vel expressi, recompensationem muneris ab obsequio vel lingua, perinde est ac si expectaret vel exigeret munus a manu, quia utrumque pecunia aestimari potest, ut patet in his qui locant operas suas, quas manu vel lingua exercent. Si vero munus ab obsequio vel lingua non quasi ex obligatione rei exhibeat, sed ex benevolentia, quae sub aestimatione pecuniae non cadit, licet hoc accipere et exigere et expectare.

Reply to Objection 3: If a man were, in return for money lent, as though there had been an agreement tacit or expressed, to expect or exact repayment in the shape of some remuneration of service or words, it would be the same as if he expected or exacted some real remuneration, because both can be priced at a money value, as may be seen in the case of those who offer for hire the labor which they exercise by work or by tongue. If on the other hand the remuneration by service or words be given not as an obligation, but as a favor, which is not to be appreciated at a money value, it is lawful to take, exact, and expect it.

Ad quartum dicendum quod pecunia non potest vendi pro pecunia ampliori quam sit quantitas pecuniae mutuatae, quae restituenda est, nec ibi aliquid est exigendum aut expectandum nisi benevolentiae affectus, qui sub aestimatione pecuniae non cadit, ex quo potest procedere spontanea mutuatio. Repugnat autem ei obligatio ad mutuum in posterum faciendum, quia etiam talis obligatio pecunia aestimari posset. Et ideo licet simul mutuanti unum aliquid aliud mutuare, non autem licet eum obligare ad mutuum in posterum faciendum.

Reply to Objection 4: Money cannot be sold for a greater sum than the amount lent, which has to be paid back: nor should the loan be made with a demand or expectation of aught else but of a feeling of benevolence which cannot be priced at a pecuniary value, and which can be the basis of a spontaneous loan. Now the obligation to lend in return at some future time is repugnant to such a feeling, because again an obligation of this kind has its pecuniary value. Consequently it is lawful for the lender to borrow something else at the same time,

but it is unlawful for him to bind the borrower to grant him a loan at some future time.

Ad quintum dicendum quod ille qui mutuatur pecuniam transfert dominium pecuniae in eum cui mutuatur. Unde ille cui pecunia mutuatur sub suo periculo tenet eam, et tenetur integre restituere. Unde non debet amplius exigere ille qui mutuavit. Sed ille qui committit pecuniam suam vel mercatori vel artifice per modum societatis cuiusdam, non transfert dominium pecuniae suae in illum, sed remanet eius, ita quod cum periculo ipsius mercator de ea negotiatur vel artifex operatur. Et ideo licite potest partem lucri inde provenientis expetere, tanquam de re sua.

Reply to Objection 5: He who lends money transfers the ownership of the money to the borrower. Hence the borrower holds the money at his own risk and is bound to pay it all back: wherefore the lender must not exact more. On the other hand he that entrusts his money to a merchant or craftsman so as to form a kind of society, does not transfer the ownership of his money to them, for it remains his, so that at his risk the merchant speculates with it, or the craftsman uses it for his craft, and consequently he may lawfully demand as something belonging to him, part of the profits derived from his money.

Ad sextum dicendum quod si quis pro pecunia sibi mutuata obliget rem aliquam cuius usus pretio aestimari potest, debet usum illius rei ille qui mutuavit computare in restitutionem eius quod mutuavit. Alioquin, si usum illius rei quasi gratis sibi superaddi velit, idem est ac si pecuniam acciperet pro mutuo, quod est usurarium, nisi forte esset talis res cuius usus sine pretio soleat concedi inter amicos, sicut patet de libro accommodato.

Reply to Objection 6: If a man in return for money lent to him pledges something that can be valued at a price, the lender must allow for the use of that thing towards the repayment of the loan. Else if he wishes the gratuitous use of that thing in addition to repayment, it is the same as if he took money for lending, and that is usury, unless perhaps it were such a thing as friends are wont to lend to one another gratis, as in the case of the loan of a book.

Ad septimum dicendum quod si aliquis carius velit vendere res suas quam sit iustum pretium, ut de pecunia solvenda emptorem expectet, usura manifeste committitur, quia huiusmodi expectatio pretii solvendi habet rationem mutui; unde quidquid ultra iustum pretium pro huiusmodi expectatione exigitur, est quasi pretium mutui, quod pertinet ad rationem usurae. Similiter etiam si quis emptor velit rem emere vilius quam sit iustum pretium, eo quod pecuniam ante solvit quam possit

Reply to Objection 7: If a man wish to sell his goods at a higher price than that which is just, so that he may wait for the buyer to pay, it is manifestly a case of usury: because this waiting for the payment of the price has the character of a loan, so that whatever he demands beyond the just price in consideration of this delay, is like a price for a loan, which pertains to usury. In like manner if a buyer wishes to buy goods at a lower price than what is just, for the reason

ei tradi, est peccatum usurae, quia etiam ista anticipatio solutionis pecuniae habet mutui rationem, cuius quoddam pretium est quod diminuitur de iusto pretio rei emptae. Si vero aliquis de iusto pretio velit diminuere ut pecuniam prius habeat, non peccat peccato usurae.

that he pays for the goods before they can be delivered, it is a sin of usury; because again this anticipated payment of money has the character of a loan, the price of which is the rebate on the just price of the goods sold. On the other hand if a man wishes to allow a rebate on the just price in order that he may have his money sooner, he is not guilty of the sin of usury.

ARTICLE 3: WHETHER A MAN IS BOUND TO RESTORE WHATEVER PROFITS HE HAS MADE OUT
OF MONEY GOTTEN BY USURY?

Ad tertium sic proceditur. Videtur quod quidquid aliquis de pecunia usuraria lucratus fuerit, reddere teneatur. Dicit enim apostolus, ad Rom. XI, si radix sancta, et rami. Ergo, eadem ratione, si radix infecta, et rami. Sed radix fuit usuraria. Ergo et quidquid ex ea acquisitum est, est usurarium. Ergo tenetur ad restitutionem illius.

Objection 1: It would seem that a man is bound to restore whatever profits he has made out of money gotten by usury. For the Apostle says ([Rm. 11:16](#)): "If the root be holy, so are the branches." Therefore likewise if the root be rotten so are the branches. But the root was infected with usury. Therefore whatever profit is made therefrom is infected with usury. Therefore he is bound to restore it.

Praeterea, sicut dicitur extra, de usuris, in illa decretali, cum tu sicut asseris, possessiones quae de usuris sunt comparatae debent vendi, et ipsarum pretia his a quibus sunt extorta restitui. Ergo, eadem ratione, quidquid aliud ex pecunia usuraria acquiritur debet restitui.

Objection 2: Further, it is laid down (Extra, De Usuris, in the Decretal: 'Cum tu sicut asseris'): "Property accruing from usury must be sold, and the price repaid to the persons from whom the usury was extorted." Therefore, likewise, whatever else is acquired from usurious money must be restored.

Praeterea, illud quod aliquis emit de pecunia usuraria debetur sibi ratione pecuniae quam dedit. Non ergo habet maius ius in re quam acquisivit quam in pecunia quam dedit. Sed pecuniam usurariam tenebatur restituere. Ergo et illud quod ex ea acquirit tenetur restituere.

Objection 3: Further, that which a man buys with the proceeds of usury is due to him by reason of the money he paid for it. Therefore he has no more right to the thing purchased than to the money he paid. But he was bound to restore the money gained through usury.

	Therefore he is also bound to restore what he acquired with it.
Sed contra, quilibet potest licite tenere id quod legitime acquisivit. Sed id quod acquiritur per pecuniam usurariam interdum legitime acquiritur. Ergo licite potest retineri.	On the contrary, A man may lawfully hold what he has lawfully acquired. Now that which is acquired by the proceeds of usury is sometimes lawfully acquired. Therefore it may be lawfully retained.
Respondeo dicendum quod, sicut supra dictum est, res quaedam sunt quarum usus est ipsarum rerum consumptio, quae non habent usumfructum, secundum iura. Et ideo si talia fuerint per usuram extorta, puta denarii, triticum, vinum aut aliquid huiusmodi, non tenetur homo ad restituendum nisi id quod accepit, quia id quod de tali re est acquisitum non est fructus huius rei, sed humanae industriae. Nisi forte per detentionem talis rei alter sit damnificatus, amittendo aliquid de bonis suis, tunc enim tenetur ad recompensationem nocuenti.	I answer that, As stated above (Article [1]), there are certain things whose use is their consumption, and which do not admit of usufruct, according to law (ibid., ad 3). Wherefore if such like things be extorted by means of usury, for instance money, wheat, wine and so forth, the lender is not bound to restore more than he received (since what is acquired by such things is the fruit not of the thing but of human industry), unless indeed the other party by losing some of his own goods be injured through the lender retaining them: for then he is bound to make good the loss.
Quaedam vero res sunt quarum usus non est earum consumptio, et talia habent usumfructum, sicut domus et ager et alia huiusmodi. Et ideo si quis domum alterius vel agrum per usuram extorsisset, non solum teneretur restituere domum vel agrum, sed etiam fructus inde perceptos, quia sunt fructus rerum quarum alius est dominus, et ideo ei debentur.	On the other hand, there are certain things whose use is not their consumption: such things admit of usufruct, for instance house or land property and so forth. Wherefore if a man has by usury extorted from another his house or land, he is bound to restore not only the house or land but also the fruits accruing to him therefrom, since they are the fruits of things owned by another man and consequently are due to him.
Ad primum ergo dicendum quod radix non solum habet rationem materiae, sicut pecunia usuraria, sed habet etiam aliquam rationem causae activae, inquantum administrat nutrimentum. Et ideo non est simile.	Reply to Objection 1: The root has not only the character of matter, as money made by usury has; but has also somewhat the character of an active cause, in so far as it administers

nourishment. Hence the comparison fails.

Ad secundum dicendum quod possessiones quae de usuris sunt comparatae non sunt eorum quorum fuerunt usurae, sed illorum qui eas emerunt. Sunt tamen obligatae illis a quibus fuerunt usurae acceptae, sicut et alia bona usurarii. Et ideo non praecipitur quod assignentur illae possessiones his a quibus fuerunt acceptae usurae, quia forte plus valent quam usurae quas dederunt, sed praecipitur quod vendantur possessiones et earum pretia restituantur, scilicet secundum quantitatem usurae acceptae.

Reply to Objection 2: Further, Property acquired from usury does not belong to the person who paid usury, but to the person who bought it. Yet he that paid usury has a certain claim on that property just as he has on the other goods of the usurer. Hence it is not prescribed that such property should be assigned to the persons who paid usury, since the property is perhaps worth more than what they paid in usury, but it is commanded that the property be sold, and the price be restored, of course according to the amount taken in usury.

Ad tertium dicendum quod illud quod acquiritur de pecunia usuraria debetur quidem acquirenti propter pecuniam usurariam datam sicut propter causam instrumentalem, sed propter suam industriam sicut propter causam principalem. Et ideo plus iuris habet in re acquisita de pecunia usuraria quam in ipsa pecunia usuraria.

Reply to Objection 3: The proceeds of money taken in usury are due to the person who acquired them not by reason of the usurious money as instrumental cause, but on account of his own industry as principal cause. Wherefore he has more right to the goods acquired with usurious money than to the usurious money itself.

ARTICLE 4: WHETHER IT IS LAWFUL TO BORROW MONEY UNDER A CONDITION OF USURY?

Ad quartum sic proceditur. Videtur quod non liceat pecuniam accipere mutuo sub usura. Dicit enim apostolus, Rom. I, quod digni sunt morte non solum qui faciunt peccata, sed etiam qui consentiunt facientibus. Sed ille qui accipit pecuniam mutuo sub usuris consentit usurario in suo peccato, et praebet ei occasionem peccandi. Ergo etiam ipse peccat.

Objection 1: It would seem that it is not lawful to borrow money under a condition of usury. For the Apostle says ([Rm. 1:32](#)) that they “are worthy of death . . . not only they that do” these sins, “but they also that consent to them that do them.” Now he that borrows money under a condition of usury consents in the sin of the usurer, and gives him an occasion of sin. Therefore he sins also.

Praeterea, pro nullo commodo temporali debet aliquis alteri quamcumque occasionem praeberere peccandi, hoc enim pertinet ad rationem scandalii activi, quod semper est peccatum, ut supra dictum est. Sed ille qui petit mutuum ab usurario expresse dat ei occasionem peccandi. Ergo pro nullo commodo temporali excusatur.

Objection 2: Further, for no temporal advantage ought one to give another an occasion of committing a sin: for this pertains to active scandal, which is always sinful, as stated above ([Question \[43\]](#), [Article \[2\]](#)). Now he that seeks to borrow from a usurer gives him an occasion of sin. Therefore he is not to be excused on account of any temporal advantage.

Praeterea, non minor videtur esse necessitas quandoque deponendi pecuniam suam apud usurarium quam mutuum accipiendi ab ipso. Sed deponere pecuniam apud usurarium videtur esse omnino illicitum, sicut illicitum esset deponere gladium apud furiosum, vel virginem committere luxurioso, seu cibum guloso. Ergo neque licitum est accipere mutuum ab usurario.

Objection 3: Further, it seems no less necessary sometimes to deposit one's money with a usurer than to borrow from him. Now it seems altogether unlawful to deposit one's money with a usurer, even as it would be unlawful to deposit one's sword with a madman, a maiden with a libertine, or food with a glutton. Neither therefore is it lawful to borrow from a usurer.

Sed contra, ille qui iniuriam patitur non peccat, secundum philosophum, in V Ethic., unde iustitia non est media inter duo vitia, ut ibidem dicitur. Sed usurarius peccat inquantum facit iniustitiam accipienti mutuum sub usuris. Ergo ille qui accipit mutuum sub usuris non peccat.

On the contrary, He that suffers injury does not sin, according to the Philosopher (Ethic. v, 11), wherefore justice is not a mean between two vices, as stated in the same book (ch. 5). Now a usurer sins by doing an injury to the person who borrows from him under a condition of usury. Therefore he that accepts a loan under a condition of usury does not sin.

Respondeo dicendum quod inducere hominem ad peccandum nullo modo licet, uti tamen peccato alterius ad bonum licitum est, quia et Deus utitur omnibus peccatis ad aliquod bonum, ex quolibet enim malo elicit aliquod bonum, ut dicitur in Enchiridio. Et ideo Augustinus Publicolae quaerenti utrum liceret uti iuramento eius qui per falsos deos iurat, in quo manifeste peccat eis reverentiam divinam adhibens, respondit quod qui utitur fide illius qui per falsos deos iurat, non ad malum sed ad bonum, non peccato illius se sociat, quo per Daemonia iuravit,

I answer that, It is by no means lawful to induce a man to sin, yet it is lawful to make use of another's sin for a good end, since even God uses all sin for some good, since He draws some good from every evil as stated in the Enchiridion (xi). Hence when Publicola asked whether it were lawful to make use of an oath taken by a man swearing by false gods (which is a manifest sin, for he gives Divine honor to them) Augustine (Ep. xlvii) answered that he who uses, not for a bad but for a good purpose, the oath of a man that swears by false gods, is a party, not to his sin of

sed pacto bono eius, quo fidem servavit. Si tamen induceret eum ad iurandum per falsos deos, peccaret.

swearing by demons, but to his good compact whereby he kept his word. If however he were to induce him to swear by false gods, he would sin.

Ita etiam in proposito dicendum est quod nullo modo licet inducere aliquem ad mutuandum sub usuris, licet tamen ab eo qui hoc paratus est facere et usuras exercet, mutuum accipere sub usuris, propter aliquod bonum, quod est subventio suae necessitatis vel alterius. Sicut etiam licet ei qui incidit in latrones manifestare bona quae habet, quae latrones diripiendo peccant, ad hoc quod non occidatur, exemplo decem virorum qui dixerunt ad Ismahel, noli occidere nos, quia habemus thesaurum in agro, ut dicitur Ierem. XLI.

Accordingly we must also answer to the question in point that it is by no means lawful to induce a man to lend under a condition of usury: yet it is lawful to borrow for usury from a man who is ready to do so and is a usurer by profession; provided the borrower have a good end in view, such as the relief of his own or another's need. Thus too it is lawful for a man who has fallen among thieves to point out his property to them (which they sin in taking) in order to save his life, after the example of the ten men who said to Ismahel ([Jer. 41:8](#)): "Kill us not: for we have stores in the field."

Ad primum ergo dicendum quod ille qui accipit pecuniam mutuo sub usuris non consentit in peccatum usurarii, sed utitur eo. Nec placet ei usurarum acceptio, sed mutuatio, quae est bona.

Reply to Objection 1: He who borrows for usury does not consent to the usurer's sin but makes use of it. Nor is it the usurer's acceptance of usury that pleases him, but his lending, which is good.

Ad secundum dicendum quod ille qui accipit pecuniam mutuo sub usuris non dat usurario occasionem usuras accipiendi, sed mutuandi, ipse autem usurarius sumit occasionem peccandi ex malitia cordis sui. Unde scandalum passivum est ex parte sua, non autem activum ex parte petentis mutuum. Nec tamen propter huiusmodi scandalum passivum debet alius a mutuo petendo desistere, si indigeat, quia huiusmodi passivum scandalum non provenit ex infirmitate vel ignorantia, sed ex malitia.

Reply to Objection 2: He who borrows for usury gives the usurer an occasion, not for taking usury, but for lending; it is the usurer who finds an occasion of sin in the malice of his heart. Hence there is passive scandal on his part, while there is no active scandal on the part of the person who seeks to borrow. Nor is this passive scandal a reason why the other person should desist from borrowing if he is in need, since this passive scandal arises not from weakness or ignorance but from malice.

Ad tertium dicendum quod si quis committeret pecuniam suam usurario non habenti alias unde usuras exerceret; vel hac intentione committeret ut inde

Reply to Objection 3: If one were to entrust one's money to a usurer lacking other means of practising usury; or with the intention of making a greater profit

copiosius per usuram lucraretur; daret materiam peccanti. Unde et ipse esset particeps culpa. Si autem aliquis usurario alias habenti unde usuras exercent, pecuniam suam committat ut tutius servetur, non peccat, sed utitur homine peccatore ad bonum.

from his money by reason of the usury, one would be giving a sinner matter for sin, so that one would be a participator in his guilt. If, on the other hand, the usurer to whom one entrusts one's money has other means of practising usury, there is no sin in entrusting it to him that it may be in safer keeping, since this is to use a sinner for a good purpose.

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Getting Started

Posted on [February 21, 2019](#)

The site is open to the public. I still have a lot of plans about additional materials to include on the site, but this will develop over time. There is some editorial work still to be done on several of the pages. I'm currently working on some different essays and providing some of the sources directly on the site where public domain permits.

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Question – Risk to Capital

Posted on [March 8, 2019](#)

1

Doesn't insurance show that risk can be sold and thus the lender can charge for the risk of default?

While in common parlance insurance involves a “transfer of risk,” the insurer does not literally take on the risk of the insured. For example, in car insurance if the car is destroyed then the insurer provides a payout to the insured based on some contractual obligation. However, central to this situation is that the insured really does suffer a real financial loss with the destruction of his property. The insurer does not take the risk away from the insured. The insurer simply agrees that should that event happen, he agrees to provide some payout to the insured.

What actually takes place in an insurance agreement is that the insurer puts up some reserves as security for the insured. The insured pays for a claim against those reserves. Should the risky event occur, then he can execute his claim against those reserves and receive what is contractually owed him. The insured is not paying the insurer to take on the risk in a literal sense. Rather the insurer is taking on a risk in virtue of the new financial obligations that are a consequent of the insurance agreement. Consequently, insurance is not a sale of risk.

Aquinas discusses this in the *De Malo Q14.A4* where he writes:

“And so if one gives money sealed in a purse to post it as security and then receives recompense, this is not interest-taking, since it involves renting or hiring out, not a contract for a loan.” ([On Evil, tran. Richard Regan](#))

“Unde si quis pecuniam signatam in sacculo concedat alicui ad hoc quod ponat eam in pignore, et exinde pretium accipiat, non est usura; quia non est ibi contractus mutui, sed magis locatio et conductio.” ([De Malo](#))

Essentially, the insurer is selling to the insured the use of the reserves as security in the case of the risky event. Aquinas notes that this is contractually analogous to other rental or lease agreements.

Posted in [Questions, St. Thomas Aquinas, Usury](#) | Tagged [De Malo, Insurance, Risk](#) | [1 Reply](#)

Against Usury – Selling Time

Posted on [March 6, 2019](#)

One of the arguments put forward by the Early Scholastics against usury was that it involves selling time, which is naturally unjust. I’m not going to propose a definitive interpretation of those Scholastics in particular or in general, but propose my own argument along those lines.

Consider two people A and B who engage in an immediate transfer of property. A gives B some property and B gives some property of a similar kind. It is true as a matter of justice that the property they give each other must be the same quantity for the transfer to be licit. An example of this may be exchanging a one dollar bill for four quarters.

No add a temporal dimension. A gives B the property right now, but B gives A the same kind of property at some later date. Now if this is the extent of the agreement then it consists in a mutuum, because A transfers the whole of property to B to receive a return in kind at a latter date. B is authorized to alienate the property in whatever manner he sees fit.

Now, the difference between the first case and the second is the addition of time. For A to demand more is then to attempt to sell this additional time in some manner.

Posted in [Exposition, Usury](#) | Tagged [Scholastics, Selling Time](#) | [Leave a reply](#)

Summary of Usury Doctrine

Posted on [March 6, 2019](#)

2

Usury is exacting something over the principal of a particular loan contract traditionally called a mutuum.

The evil of usury arises from the mutuum because the manner in which property claims are structured and transferred. In the mutuum the lender grants the borrower some property where the borrower may alienate the property in some manner. Because of this the lender transfers the whole ownership to the borrower. In return the lender receives the promise of the borrower to return the same amount in kind at a later date.

As a consequence, the lender has no further property claims to charge for. When he receives back the principal, he receives back all that he gave and the equality of justice is satisfied. For him to charge something more is to attempt to charge twice for the principal he gave or to charge for some property claim that he does not possess. To charge twice for the same thing or to charge for what does not exist is manifestly unjust.

Usury is intrinsically evil and essentially consists in contracting in a mutuum for profit or seeking profit from a mutuum.

Posted in [Exposition, Summary](#) | Tagged [Mutuum, Summary](#) | [2 Replies](#)

Question – Evidence for Mutuum

Posted on [March 1, 2019](#)

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What is the evidence that usury is a matter of the mutuum contract?

The most significant, recent and clearest Magisterial statement is the encyclical of Pope Benedict XIV, *Vix Pervenit*, where in he writes:

*“The nature of the sin called usury has its proper place and origin in a **loan** contract.”*

*“Peccati genus illud, quod usura vocatur, quodque in **contractu mutui** propriam suam sedem et locum habet...”*

Pope Benedict XIV specifically identifies the *mutuum* contract as the seat and origin of the sin of usury.

Another source is the 10th Session of the Fifth Lateran Council, which wrote:

*Some of these masters and doctors say that the credit organisations are unlawful. After a fixed period of time has passed, they say, those attached to these organisations demand from the poor to whom they make a **loan** so much per pound in addition to the capital sum. For this reason they cannot avoid the crime of usury or injustice, that is to say a clearly defined evil, since our Lord, according to Luke the evangelist, has bound us by a clear command that we ought not to expect any addition to the capital sum when we grant a **loan**. ([papalencyclicals.net](#))*

*Nonnullis enim magistris et doctoribus dicentibus eos montes non esse licitos in quibus aliquid ultra sortem pro libra decurso certo tempore per ministros huius montis ab ipsis pauperibus quibus **mutuum** datur exigitur et propterea ab usurarum crimine iniustitia ve seu ab aliqua certi specie mali mundos non evadere cum dominus noster Luca evangelista attestante aperto nos praecepto obstrinxerit ne ex dato **mutuo** quidquam ultra sortem sperare debeamus. ([Documenta Catholica Omnia](#))*

In the philosophical tradition, Aquinas recognized that the *mutuum* was central to the problem of usury. In the *Summa Theologica*, he introduces usury as follows:

*We must now consider the sin of usury, which is committed in **loans**.*

*Deinde considerandum est de peccato usurae, quod committitur in **mutuis**.*

[Summa Theologica II.II.Q78.intro](#)

[Raymond De Roover](#) looks at several authors in the 12th, 13th and 14th centuries.

These include [Geoffrey of Trani](#), [Henry of Susa Cardinal Hostiensis](#), [Raymond of Penafort](#), [St. Bernadine](#). All of these take the same view that usury arises from only the *mutuum*. Many of these authors begin by considering other contracts from Roman Law

and take the *mutuum* specifically as the source of usury. [Others](#) could be included as well.

In the later tradition, the *mutuum* held central place in the analysis of usury. In Fr. Dempsey's work [Interest and Usury](#) he notes that for the Late Scholastics the distinction between a *mutuum* and a "loan of accommodation" or "*commodatum*" was key to understanding usury. (142) He also notes [Luis de Molina](#) writing, "Look and see if in that contract a *mutuum* enters, either formally or virtually; and if it does, whether a gain is sought from the *mutuum*; if not, then it is not usury, however just or unjust otherwise." (170) During this period, Dempsey goes so far as to say that everyone agreed as to what usury was. (165)

This is also confirmed by the research of Fabio Monslave in his article [Late Spanish Doctors On Usury, and the Evolving Scholastic Tradition](#). He writes, "For scholastics, usury was restricted to the particular loan contract called *mutuum*." (218) He further quotes [Juan Cardinal De Lugo](#) writing, "we will define usury as the profit that comes from the *mutuum* as an immediate and owed thing."

Additionally in Brian McCall's work *The Church and the Usurers* he writes, "At the heart of the usury doctrine is the Roman Law contract of *mutuum*." (163-164)

In St. Alphonsus Liguori's work on Moral Theology, following the Scholastic tradition prior to him he defines usury as "*lucrum immediate proveniens ex mutuo*" or "profit immediately arising from a *mutuum*." ([Tomus III. Lib III. Tract V. Cap III. Dub VII](#))

Even into the late 19th and early 20th century, there remained some recognition that *mutuum* was central to the evil of usury. Fr. McHugh and Fr. Callan in their [Moral Theology](#) (1953) recognize that usury occurs in a *mutuum*. (§2136) Fr. Rickaby also in his [Moral Philosophy](#) (1905) acknowledges the *mutuum* as central. (Part III.Ch V. Sect V) In John Elmendorf's [Elements of Moral Theology](#) (1892), in considering various types of contracts he recognizes *mutuum* as the location of usury. Of course these authors qualified permission of usury after this acknowledge warrants some response, but even these authors recognize the *mutuum* as central to the evil of usury.

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AMA 2019 Conference Paper

Posted on [May 4, 2019](#)

This was the paper I had intended to present at the [American Maritain Association conference in 2019](#). Unfortunately I was too ill to attend. It is still rough and does properly include all the citations. I'm working on a fuller paper more focused on Aquinas.

Lend Hoping Nothing in Return: Usury in Modern Economies

by Michael Humpherys

In the 1745 encyclical *Vix Pervenit* Pope Benedict XIV wrote, "We exhort you not to listen to those who say that today the issue of usury is present in name only, since gain is almost always obtained from money given to another. How false is this opinion and how far removed from the truth! We can easily understand this if we consider that the nature of one contract differs from the nature of another." These words are no less true today than they were almost three centuries ago.

Currently we live in an economy where the taking of interest is the norm and is even expected for an economy to be healthy. The condemnation of usury frequently stands as a doctrine of some historical import, but it remains largely unknown even among Catholics or reduced to dealing with an injustice of charging exorbitant rates of interest particularly on the poor. However, the history of the Church's treatment of usury stands in sharp contrast to this limited view. Anyone who begins to study the arguments for the usury doctrine realizes first that usury is profiting from any gain on a specific loan contract called a *mutuum*. The student of the doctrine will discover also the duration and intensity of the condemnation of usury beginning with the Scriptures, the Church Fathers, Councils and popes.

In order to understand the presence of usury in modern economics, I will follow Benedict XIV's advice and "consider that the nature of one contract differs from the nature of another." Along this line I will begin by considering how loan contracts differ in nature. Next I will justify taking the loan contract of *mutuum* specifically as the subject of the usury doctrine. Then I will seek to demonstrate the evil of usury as the seeking of gain or something more than the principal in a *mutuum* from the nature of the contract. Finally, I will consider modern contracts that do and do not differ essentially from the *mutuum* and the consequent licit profit or usury in each.

The Point of Departure: *Mutuum*

In order to understand the usury doctrine, we must choose the proper point of departure. Many modern authors have taken that to be the nature of money itself. However, following Benedict XIV, I want to shift the focus to the nature of the contract. It is acknowledged by most authors studying the doctrine that usury takes place in a loan contract. It is from the nature of loan contract themselves that I wish to understand the evil of usury. Therefore, let us begin by narrowing in on the nature of the contracts.

To begin with, it is important to take the point of departure from a contract as a properly human act. Contracts as such are agreements between persons. They are human acts that are consequently grounded in the natural law. The positive law may formalize these agreements for the sake of the common good, but they remain irreducibly human acts. Consequently, their justice or injustice must be determined in light of the natural law, not merely the laws of human societies.

Now the term "loan" is equivocal and therefore has multiple senses that need to be separated. The first is the sense in which I loan my lawn mower to another person. The borrower takes possession of the mower, uses it receiving its benefits and then returns it to me. This type of loan has traditionally been called a "loan for use" or in the Latin of Roman law *commodatum*. Another sort of loan takes place when I loan a cup of sugar to my neighbor so that he might use it up in baking. Sometime later he will return to me the same amount of sugar but certainly not the same sugar that had been used up. This has been called a "loan for consumption" or in Latin a "*mutuum*." It is this second sort of loan, namely the *mutuum*, that I wish to focus on in my presentation on usury.

That focus follows in the footsteps of the Magisterial authority of the Church. In the oft cited passage on usury of the Fifth Lateran Council, the term used by the Council and translated as "loan" is *mutuum*. It is under this sort of contract that the Council understood Christ's command to "lend hoping nothing in return" as referring to a

lender not seeking more than his principal in return. (Session 10) Additionally in Benedict XIV's encyclical *Vix Pervenit*, he writes "The nature of the sin called usury has its proper place and origin in a loan contract," (3.I) where the term "loan contract" is the translation of *contractu mutuio* "contract of *mutuum*."

We may also consider the juridical, philosophical and theological tradition around the usury doctrine. John T. Noonan notes in his *Scholastic Analysis of Usury* that, beginning in the early 11th century, the *mutuum* contract was at the center of the Scholastic and canonist traditions' reflection on the evil of usury. (39-40) In the *Summa Theologica*, Aquinas introduces the evil of usury stating that usury takes place in *mutuum* contracts. (S.T. II.II.Q78.intro).

Also in Fr. Dempsey's work *Interest and Usury*, he surveys the work of the Late Scholastics of the sixteenth and seventeenth centuries, Luis de Molina, Leonardus Lessius and Juan de Lugo. Dempsey quotes Molina arguing, "Look and see if in that contract a *mutuum* enters, either formally or virtually; and if it does, whether gain is sought from that *mutuum*. If it is, then that contract is usurious and such gain is usury; if not, then it is not usury, however just or unjust otherwise." (170) Additionally, he quotes de Lugo stating usury is "gain immediately arising as an obligation from a loan of *mutuum*... If the gain does not arise from a *mutuum*... however unjust, it is not usury." (164). Dempsey notes no significant disagreement in this period with the definition of usury and goes so far as to write, "Everyone agree[d] as to what usury [was]." (165)

Finally, in Brian McCall's work *The Church and the Usurers* she writes that "At the heart of the usury doctrine is the Roman Law contract of *mutuum*." (163-164) Thus, we see that *mutuum* contract played an important role in the rational articulation and defense of the usury doctrine

Having established the reason for choosing the *mutuum*, let me now consider in what the contract consists. According to the Roman Law Institutes of Justinian, the *mutuum* is described as a "loan of such things as are estimated by weight, number or measure... things which we transfer our property on condition that the receiver shall transfer to us at a future time, not the same things, but other things of the same kind and quality." (Book 4, Title 14) Here we see that the nature of the property that may be lent is extremely broad in whatever is estimated "by weight, number or measure," and that return be made in kind.

Further, while Aquinas doesn't offer an explicit definition, he groups the *mutuum* with contracts where "a man transfers his thing to another, that the latter may have the use of it with the obligation of returning it" (ST II.II.Q61.A3.co) and the ownership of the thing is transferred (ST II.II.Q78.A1.co, De Malo Q14.A4.co) with the borrower to "return [the property]... in equal measure" (ST II.II.Q78.A1.co) rather than in particular. Aquinas also takes the category of lendable property to be broad encompassing any property noting that exchange is a kind of consumption and that even a *mutuum* of shoes could involve usury. (De Malo Q13.A4.ad15)

Finally, Fr. Dempsey provides the definition from Lessius as "the delivery of an article (the qualities of which are fixed in number, weight or measure) with the intent that it immediately become the property of the one receiving it with the obligation to restore an article of like kind and quality." (141) Here again we see a broad consideration of the nature of the property to be lent as well as the return to be made in kind at a later date.

The characteristics of the *mutuum* are the same across the centuries. There is some property lent, and it is to be returned at a later date. The borrower becomes the owner of the property. Moreover, the borrower promises to return not the identical property,

but something of the same kind and quality. It is this last characteristic that I want to focus on to better understand this contract and its implications with respect to usury. The obligation to make a return in kind establishes the condition for the satisfaction of the borrower's obligation. The lender is owed something of the same kind but not the same property that was originally lent. This means that in the contract the property is considered as interchangeable for use with some other property, or "fungible." For example, we generally treat sugar, gold, oil, currency, and so forth as fungible or interchangeable. We are generally unconcerned if we have this or that particular gold or coin as long as it is of the same kind and quantity.

Now I say specifically that the property is "treated" as fungible, because there is nothing in the nature of the object that makes it fungible. For example, two different pieces of gold may be treated as fungible qua gold, but if one of them is coined currency, then the two pieces would not be fungible qua currency. Property generally has more than one use and it is the contract that determines for what use some property is considered fungible or what use makes them interchangeable.

As a result of treating the property lent as fungible, the lender is indifferent to what particular object is returned. He only cares that the actual object returned be of a similar quantity and quality as the property originally lent. Consequently, as the property is treated as fungible, it is treated as alienable or as Aquinas puts it "consumed in use." Aquinas' sense of "consumed in use" is much broader than merely consuming of food, but also encompassing even an exchange of shoes as a kind of consumption. (De Malo Q13.A4.ad15) The contract authorizes the borrower to alienate the property itself and the lender consequently only expects some property of the same kind and quantity.

Following on this alienability, the ownership of the property is transferred and cannot be separated from its use. Since the property can be alienated from the borrower through his use of it, it is necessary that the borrower take ownership of it. For if he did not take ownership, then he could not dispose of it because the lender would still have a claim over it. The borrower's attempt to alienate the property would then be a violation of the lender's ownership. However, the borrower is authorized to alienate it and therefore ownership necessarily transfers to the borrower.

Further, as a consequence of the property being treated as alienable, use and being are treated as inseparable. This is Aquinas' key proposition writing "regarding the things whose use consists of consuming them, the use of the thing is only the thing itself..." (De Malo Q13.A4.co) When the thing is literally consumed as is the case with wine, the being of thing is destroyed and ownership is dissolved. When the thing is alienated as with money in exchange, the ownership is lost or handed over in that exchange. In both types of uses, the lent property and the borrower's ownership claim over it is alienated from him. Consequently, the claim to the use of the thing and the ownership cannot be separated, because the very use alienates the ownership.

Since claims to use and ownership are inseparable for property treated as alienable, when the lender grants the property to the borrower, he has no further property claim. What the lender receives in the contract is the personal promise of the borrower to the return in kind. Put differently the *mutuum* is secured not by property

but the personal promise of the borrower and this is a distinctive characteristic of the *mutuum*. When the lender receives back the same quantity and quality, he receives back all he gave satisfying commutative justice. Should the lender exact more from the borrower, the lender “would be selling the same thing twice, or he would be selling what does not exist.” (S.T. II.II.Q78.A1.co) In the first way, the lender charges for the same thing twice in that he charges for the ownership of the thing even though he receives it back and then again something more for the use as though it were separable from ownership he has already received back.

Aquinas uses the concept of “*usufruct*” or “the right of using and enjoying another’s goods while keeping intact the substance.” He writes that the lender “sells what does not exist, because he does not have the *usufruct*” (Commentary on Psalm 14) or “if [the lender] exacts more for the *usufruct*... he exacts a price for something non-existent.” (S.T. II.II.Q78.A1.ad5). Since use and ownership are inseparable it is not possible for a *usufruct* to exist as a claim the lender can retain and for which he can charge.

Consequently, when the lender receives back his principal and charges again something more, he charges for a claim to the use he cannot possess and therefore charges for nothing. This is contrary to natural justice and constitutes the sin of usury. In order to make these insights clearer, following Aquinas let us consider the related contract of a “*locatio*” or lease agreement. This is similar to the “loan of use” or *commodatum* that I spoke at the beginning of this presentation, except that the lender charges for the use whereas the *commodatum* is essentially a gratuitous agreement.

The key difference between *locatio* and the *mutuum* is that the same property lent is returned. If I lease my mower to you, you are authorized to make use of it and enjoy its benefits, but you must return the very same mower to me. Consequently, the mower is not treated as fungible or alienable and as a result the use and being are not inseparable. In this particular agreement, I retain the ownership of the mower and sell you the use of it or the *usufruct*. In this way, you enjoy the benefits and product of the mower. When you return the mower to me, I receive it back as my own property and I can charge something more for the temporary transfer of the use of the mower. Consequently, to charge for something more is not an instance of usury and generally licit.

In sum, usury arises from the manner in which the contract treats the property. Under the *mutuum*, the property is treated as fungible and alienable. This means that ownership and use are inseparable and transferred to the borrower. Consequently, when the lender receives back what he gave in the same quantity and quality, commutative justice is satisfied and to exact more is unjust. In contrast, a lease agreement does not treat the property as alienable and the lender can charge for the use of the property as separable from its ownership without injustice, because he retains the ownership and sells the use.

Modern Contracts

Now let us consider some other types of contracts. The first type of contract that I would like to consider is called the *census* which has some superficial similarity to the *mutuum* contract. A typical *census* would involve a farmer receiving money from some investor. In exchange for the money, the farmer agreed to grant the investor regular payments of the produce from the land itself. Later *census* contracts would provide the investor with regular payments in money rather than the actual fruits of the land. (Noonan 155, McCall 93-94)

Historically, there was significant trouble in understanding how the payments were to be justified in a way that didn’t undermine the usury doctrine with respect

to *mutuum* contracts. (Noonan 115ff) Juan De Lugo provides a sophisticated understanding of the contract. He argues that the purchaser obtains a partial claim against the *usufruct* of the land in the case of a farmer. However, the purchaser does not seek to make use of the land. Rather implicitly constituting the contract he rents back the *usufruct* to the farmer, who does make use of it for some harvest. This rental of the *usufruct* back to the farmer is then paid back to the purchaser with the fruits of the land. The purchaser then adds a stipulation to the contract that he be paid in the monetary equivalents rather than the produce of the land. (Noonan 242) Essentially the purchaser buys a claim to the use of the land, which he then rents back to the farmer for regular monetary payments.

In addressing the controversies of the time De Lugo's solution firmly grounds the *census* in actual property and property claims. In such a solution, the base of the *census* must be some really fruitful property that can admit a *usufruct* and thus not be considered alienable. This is consistent with the 1568 papal bull *Cum Onus* of Pope Pius V which taught that the *census* base had to be a definite, fruitful immobile good. (O'Callaghan 136-137, McCall 118) Since the *census* purchaser's claim is grounded in a property claim rather than a personal guarantee seen in the *mutuum*, should the underlying base be destroyed the purchaser would have no further property claim from which to restore his principal. This agrees with the 1455 constitution *Regimini Universalis* of Pope Callistus III which states that in the case of a *census* even if the property "be reduced to utter destruction... [the *census* purchaser] would not be empowered to recover even in respect of the price paid." (Denzinger 716) This we can contrast with the *mutuum* where the borrower is obliged "to pay it all back"

(ST II.II.Q78.A2.ad5) whatever happens to the property lent

With the *census* in mind, let us consider the modern corporate bond contract. This is similar to a *census*, because it provides the bondholder with regular payments in return for invested money. This contract can be analyzed in a similar way to the *census*. The bondholder does not become an owner of the company, but has a real property claim against it. Nor does the bondholder attempt to make use of the property of the company itself for his own advantage. Rather, this contract can be analyzed in the same terms as the *census* where the bondholder has a property interest in the corporation that he then rents back to the company as it works to make profits from its operations. (Usury FAQ 29-30) Consequently, the "interest" from a bond can be thought of as a rent against a partial usufruct as in a *census* and differs essentially from usury from a *mutuum*.

Now, let me turn to the contracts which are most clearly *mutuum* contracts, unsecured personal loans or credit. Such contracts are called unsecured precisely because they are not backed or secured by any real property. A bank or other company grants a person some money to use as they please and the bank receives back only the promise of repayment. The institution receives no property claims to anything that the money is used for and consequently has no property claim to charge something more. The structure of such contracts involve a *mutuum* agreement and these contracts are almost always sought for profit. These profits over the principal constitute usury and are therefore evil and illicit.

Specific examples of unsecured loans are student loans and credit cards. In a student loan, a person received some money to pay tuition for educational services, books, room and board, etc. The bank that writes the loan agreement does not make any property claims against what is purchased. The loan is then secured only by the promise of the student to return the money at some future time or partially over the course of years. Certainly almost all student loans are sought for profit and constitute usury. The case of credit cards is very similar where credit is generally extended to

purchase whatever the card holder seeks and this credit is then secured only by the promise of the holder to pay it back. The credit card company doesn't possess any actual property claim from which to charge something more. Consequently, the credit cards are also generally usurious.

Conclusion

In conclusion, I have proposed taking the point of departure for understanding usury to be the contract traditionally called a "*mutuum*." First, I've argued that the nature of the contract is appropriate precisely because a contract is essentially an agreement between persons and therefore a human act grounded by the natural law. Further I've argued that this is an appropriate point of departure, because usury has been linked to the *mutuum* contract by Magisterial documents and the canonist and Scholastic traditions.

Starting from the *mutuum* contract, I focused on the manner in which the contract treats the property, drawing from Roman law, Aquinas and the Late Scholastics. In working out the implications of this contract, I focused principally on the characteristic that the return is made "in kind." This led me to conclude that the *mutuum* specifically treats the property as fungible and consequently as alienable or "consumed in use." The result of this is that the lender has no property claim against which to make an additional charge over the principal. To exact more is to charge for the same thing twice or to charge for what does not exist, which is contrary to natural justice.

Finally, I considered the medieval *census* contract with its modern counterpart, a corporate bond and how the *census* is considered licit both by faith and reason, both philosophically and by the Magisterium. Additionally, I considered the common contracts of unsecured personal loans, which are clear modern examples of *mutuum* contracts which are almost always sought for profit and the clearest instances of usury in modern society. Having followed Benedict XIV, we see that the nature of contracts differ one from another. On this basis we can see where usury is present and pervasive in modern economies, but also see licit gain as well.

Posted in [Exposition, Usury](#) | [Leave a reply](#)

Usury and Mutuum – Late Scholastics

Posted on [June 7, 2019](#)

4

Source: [De Peccatis Summula](#)

Usura, hoc est lucrum ex mutuo, iniqua est... (pg 295)

Usury, this is profit from a mutuum, is unjust.

[Thomas Vio Cajetain, OP \(1469-1534\)](#)

Source: [Condex de Restitutione](#)

Usura est lucrum[m] ex mutuo principaliter intentum. Unde ubi non est mutuum, usura locum habere non potest. (pdf page 289)

Usury is profit from a mutuum principally intended. Where there is not mutuum, there cannot be usury.

[Juan de Medina, SJ \(1490-1547\)](#)

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Usury and Mutuum – Early Scholastics

Posted on [June 7, 2019](#)

5

Source: [Corpus Thomisticum](#)

Ex his apparet, quod in solo actu mutui, circa commutationem rerum, primo et per se inest ratio usurae... (Caput 3)

From this it appears that in only the act of mutuum, concerning things exchanged, the account/reason of usury first and in itself is in. (My translation)

[Giles of Lessines, OP \(died 1304\) – Pupil of St. Thomas Aquinas](#)

Source: [Tractatus de usuris \(Google Books\)](#)

In quo contractu habeat esse usura? Et dico quod solum in contractu mutui.

In what contract may there be usury? And I say that only in a contract of mutuum.

[Alexander Bonini \(1270-1314\)](#)

Source: [Google Books \(page 207-208\)](#)

“... usura solum in mutuo cadit” (Sermon 36. Art 1. Cap 1 – attributed to St. Ambrose)

Usury is found only in mutuum.

“quod ideo dicit, quia usura, sicut supra patuit, solum in contractu mutui veri...” (Sermon 36. Art 1. Cap 2 – Definition Attributed to Hostiensis)

For this reason he says that usury, as added above [the principal], [is] truly only in the contract of mutuum...

“Usura est lucrum ex mutuo principaliter intentum.” (Sermon 36. Art 1. Cap 3 – Definition Attributed to Magistris)

Usury is profit principally intended from a mutuum.

“Usura solum in contractu mutui committitur.” (Serm 36 Art 2. Cap 1)

Usury is committed solely in a contract of mutuum.

“Dicendum, secundum omnes Doctores, quod proprie non committitur, nisi in contractu mutui.” (Serm 36 Art 2. Cap 1)

What is to be said, according to all the Doctors, that [usury] is not properly committed, except in the contract of mutuum.

[St Bernardine of Sienna \(1380-1444\)](#)

Posted in [Quotes](#), [Research](#), [Usury](#) | Tagged [Early Scholastics](#), [Latin](#), [Mutuum](#) | [5 Replies](#)

Parable of Talents and Usury

Posted on [August 31, 2019](#)

3

From today's reading from Matthew 25:

Then the one who had received the one talent came forward and said, 'Master, I knew you were a demanding person, harvesting where you did not plant and gathering where

*you did not scatter; so out of fear I went off and buried your talent in the ground. Here it is back.' His master said to him in reply, 'You wicked, lazy servant! So you knew that I harvest where I did not plant and gather where I did not scatter? Should you not then have put my money in the bank so that I could have got it back with **interest [usury]** on my return?*

Latin Vulgate

25:24 Accedens autem et qui unum talentum acceperat, ait : Domine, scio quia homo durus es ; metis ubi non seminasti, et congregas ubi non sparsisti :

25:25 et timens abii, et abscondi talentum tuum in terra : ecce habes quod tuum est.

25:26 Respondens autem dominus ejus, dixit ei : Serve male, et piger, sciebas quia meto ubi non semino, et congrego ubi non sparsi :

*25:27 oportuit ergo te committere pecuniam meam numulariis, et veniens ego recepissem utique quod meum est cum **usura**.*

Commentary of Lapidé

Vers. 26, 27. His lord answered and said unto him, &c. This likewise is an emblem, and only signifies how we ought by all means to increase the grace of God. Observe that they are called money-changers, who make gain by exchange, and by lending and borrowing. This gain is lawful in the way of exchange and merchandise. It is unlawful in the way of lending upon interest, and is the sin of usury. Wherefore the Lord in this place does not speak so much according to the abstract right of the matter, as parabolically, partly because of the common practice of nations (for usury was allowed in many nations, especially among the Jews, who think that God permitted them to exact it from the Gentiles, in Deut. xxiii. 19), partly as a deduction from the words of the slothful servant, who attributed to his master the avarice of extorting money, by fair means or foul, from himself or others. This passage may, however, be accommodated to what is signified by the parable in the following manner—that God requires of us interest, as it were, for His gifts and graces, but that He will render us far greater interest of glory in Heaven. Hence the saying, "If thou wilt lend, lend unto God." Also it is said in Prov. (xix. 17), "He that hath mercy upon the poor lendeth unto the Lord; and what he layeth out it shall be paid him again."

Commentary of Haydock

Ver. 24. I know that thou art a hard man. *This is an insignificant part, that is, an ornament of the parable only; as also when it is said: I should have received mine with usury, v. 27. Wi. — This seems to have been an adage levelled at avaricious men, who are never pleased but with what increases their hoards. Under this symbol is also depicted the excuse of many, who accuse God of being the cause of their idleness, both here and in the judgment to come; as that God is too severe and unbending, whose service is extremely hard, and who adopts, rejects, and reprobates whom he pleases; who deals out heavier burdens than the weak nature of man is made to support; who denies the grace of obedience, and thus wishes to reap where he has not sown. Jans.*

Posted in [Scripture](#) | Tagged [Gospel of Matthew](#), [Haydock](#), [Lapidé](#) | [3 Replies](#)

St. Francis Xavier – Usurious Contracts

Posted on [August 30, 2019](#)

1

Source: [The Life and Letters of St. Francis Xavier \(1872\): Letter LXIX: To Father Gaspar Baertz, going to Ormuz, Goa \(Google Books\)](#)

*When in the sacred tribunal of penance you have heard all that your penitents have prepared themselves to confess of their sins, do not at once think that all is done, and that you have no further duty to discharge. you must go on further to inquire, and by means of questions to rake out the faults which ought to be known and to be remedied, but which escape the penitents themselves on account of their ignorance. Ask them what profits they make, how, and whence? **what is the system that they follow in barter, in loans, and in the whole matter of security for contracts? You will generally find that everything is defiled with usurious contracts**, and that those very persons have got together the greater part of their money by sheer rapine, who nevertheless asserted themselves so confidently to be pure from all contagion of unjust gain; having as they said, the true testimony of a conscience that reprehends them in nothing. Indeed, some person's consciences have become so hardened that they have either no sense at all, or very little sense, of the presence of even vast heaps of robberies which they have gathered into their bosom. (pg. 118, emphasis mine)*

As St. Francis Xavier recognizes, the problem of usury can be “raked out” by examining the “whole matter of security of contracts.” The difference between *mutuum* contracts and others with licit profits is that *mutuum* contracts are not secured by any real property. A *mutuum* is secured or back simply by the promise of the borrower to make a return. We see this also in the papal bull of Pius V [Cum Onus](#) where he insists that a census contract's base must be “an immoveable thing,” that is some alienable property. This excludes the personal census which lays claim to a man's future labor. We also see this in Sixtus V papal bull [Detestabilis Avaritia Ingluvies](#) where the pope condemns triple contract where the insurance portion is secured by the personal promise of the merchant.

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Fifth Lateran Council's Definition of Usury

Posted on [August 30, 2019](#)

I was reading Brandon Watson recently on usury the other day. One of the surprising things he proposes is taking the “definition” of usury of the Fifth Lateran Council, full stop. Let's look at the cited section and then discuss:

Usury is when (to use the famous Fifth Lateran definition), from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense, or any risk. – [Siris](#)

For, that is the real meaning of usury: when, from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense or any risk.

– [PapalEncyclicals.com](#)

Ea enim propria est usurarum interpretatio quando videlicet ex usu res quae non germinat nullo labore nullo sumptu nullo ve periculo lucrum foetus que conquiri studetur. – [Documenta Catholica Omnia](#)

The first thing one should note about this is that one would be hard pressed to find a moral theologian that took this as the definition of usury. As I've [noted before](#), the universal consensus among theologians and canonists is that usury is some variation

of “profit from a *mutuum*.” This makes the claim particularly curious and why Brandon provides it the accolade of “famous.”

The second worthy note is that the definition ([as cited \[1\]](#)) in no way references a loan. Yet, the vast majority of authors, Brandon included, acknowledge that usury occurs in loans (of some sort). This means that this sentence, taken by itself, is radically deficient as a definition.

Another issue is how we are to understand “from its use, a thing which produces nothing” (“*ex usu res quae non germinat*”). If we take this to mean “a thing (per se or of its nature)” then we arrive at some difficulties. Money can be rented for show as admitted by Aquinas, though per se money “produces nothing.” Brandon adds to money used “as such,” such that the principal use of money produces nothing. This conflicts with Aquinas because a silver vessel [\[2\]](#) or pair of shoes [\[3\]](#) as such can be rented, but can be used as money or sunk in exchange. Put differently, they are “productive things” that can enter into usurious transactions, at least according to Aquinas.

A final issue is with reference to the caveat to risk. Brandon takes this as related to the extrinsic title of *periculum sortis* where risk provides some title to just profit from a loan. This appears to also permit the *societas* where something producing nothing, money, is used to acquire gain without labor or expense on the part of a silent partner, but his profits are licit because he holds some risk. The problem is that in a loan the lender holds some risk of the loss of his capital and this is intrinsic to the loan itself, i.e. the very act of lending involves risk of loss. If we take the Council’s statement as definition, then there is no usury in loans, because there is always at least some risk involved which the lender suffers. If the silent partner can draw profits from the *societas* itself because he holds some risk, then the lender would seem to as well, because he suffers risk [\[4\]](#) and the risk is what makes it not usury.

Periculum sortis as an *extrinsic* title was more justified (among other arguments) by looking at an insurance contract running parallel to the *mutuum*. One could supposedly make a just charge to require the borrower to pay for insurance on the *mutuum*. The lender then could simply “self-insure” (i.e. not insure) and charge the borrower for his non-insurance. The reasoning is based on a [sketchy understanding of insurance](#), but involves a very different logic than what is going on in Council’s statement.

1. For this reason they cannot avoid the crime of usury or injustice, that is to say a clearly defined evil, since our Lord, according to Luke the evangelist, has bound us by a clear command that we ought not to expect any addition to the capital sum when we grant a **loan [mutuum]**. For, that is the real meaning of usury: when, from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense or any risk.

*propterea ab usurarum crimine iniustitia ve seu ab aliqua certi specie mali mundos non evadere cum dominus noster Luca evangelista attestante aperto nos praecepto obstrinxerit ne ex dato **mutuo** quidquam ultra sortem sperare debeamus. Ea enim propria est usurarum interpretatio quando videlicet ex usu res quae non germinat nullo labore nullo sumptu nullo ve periculo lucrum foetus que conquiri studetur.*

Taken in context, the Council is referring to a *mutuum* contract and the usury “definition” must be understood within that context.

2. ST II.II.Q78.A1.ad6

Reply to Objection 6: The **principal use of a silver vessel is not its consumption**, and so one may lawfully sell its use while retaining one’s ownership of it. On the other

hand the principal use of silver money is sinking it in exchange, so that it is not lawful to sell its use and at the same time expect the restitution of the amount lent. It must be observed, however, **that the secondary use of silver vessels may be an exchange, and such use may not be lawfully sold.** In like manner there may be some secondary use of silver money; for instance, a man might lend coins for show, or to be used as security.

Ad sextum dicendum quod usus principalis vasorum argenteorum non est ipsa eorum consumptio, et ideo usus eorum potest vendi licite, servato dominio rei. Usus autem principalis pecuniae argenteae est distractio pecuniae in commutationes. Unde non licet eius usum vendere cum hoc quod aliquis velit eius restitutionem quod mutuo dedit. Sciendum tamen quod secundarius usus argenteorum vasorum posset esse commutatio. Et talem usum eorum vendere non liceret. Et similiter potest esse aliquis alius secundarius usus pecuniae argenteae, ut puta si quis concederet pecuniam signatam ad ostentationem, vel ad ponendum loco pignoris. Et talem usum pecuniae licite homo vendere potest. (emphasis mine)

3. De Malo Q13.A4.ad15 Sicut calceamenti proprius et principalis usus est calceatio, secundarius autem commutatio.

The proper and principal use of shoes is [wearing], the secondary however is exchange. (my translation)

4. Risk here is obviously taken equivocally and the for the reason of emphasizing the ambiguity of the Council's statement as understood. In the *societas*, the partner retains the ownership of his property and the risk associated with ownership. However, in the *mutuum* contract the lender transfers ownership and the risk concomitant with it. The lender then attempts to draw profit without having a property claim represented by the normal risk of ownership. Brandon appears to accept that justice in exchange is satisfied with a charge justified by some risk involved, such as "you could lose the whole loan, to detriment to yourself."

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Billuart, O.P. – Cursus Theologiae

Posted on [August 8, 2019](#)

Source: [Cursus Theologiae Tomus VII](#)

Caeterum in praxi, materia mutui est regulariter res aliqua ipso suo usu principali et quidem unico consumptibilis, sive physice sive moraliter, ut sunt vinum, panis, pecunia; usus enim vini principalis est potari, et dum potatur consumitur physice, similiter panis dum manducatur; usus principalis pecuniae est distrahi in commutationibus, et dum distrahitur, consumitur moraliter; perit enim distrahenti non secus ac si consumeretur: et sub hac tantum ratione considerat mutuum S. Thomas in tota hac quaestione. Et hinc vestes, libri, vasa, instrumenta artis, equi et similia quae unico actu non consumuntur, mutuari non solent, sed commodari aut locari. – Q. 78. a. 1. ad 6. – Observa tamen, etiam res quas diximus ipso suo usu principali consumi, posse etiam commodari aut locari quoad secundarium aliquem usum, ut pecunia ad ostentationem, aut ad ponendum loco pignoris. (Diss IV. Art I)

But in practice, the matter of a mutuum is regularly a thing with its principal and indeed single consumable use, either physically or morally, as are wine, bread, money. For the use of wine principally is to be drunk, and while it is being drunk it is consumed physically, similarly bread when it is eaten. The principal use of money is to be sold in exchange, and when it is being sold, it is consumed morally. It truly perishes

being sold not otherwise than if it had been consumed. And only under this manner St. Thomas considers the *mutuum* in this whole question. And hence clothes, books, vessels, instruments of art, horse and the like which are not consumed with a single act, are not accustomed to lend [for consumption] (*mutuari*), but to lend [for use] (*commodari*) or to lease. – Q. 78. a. 1. ad 6. – Observe however even a thing which we said with its principal use consumes itself, [there is] the ability even to lend [for use] or lease with respect to some second use, as money for show, or to be laid up for security. (My translation)

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Classifying Errors

Posted on [August 1, 2019](#)

Usury is traditionally defined as “*lucrum immediate proveniens ex muto*” or “profit arising immediately out of a *mutuum* contract.” This is the definition that St. Alphonsus Ligouri gives in his [Moral Theology](#) and this follows the tradition going back to at least the 12th century. Within this there are two main elements, namely “*mutuum* contract” and the “profits.” From these two elements we can group the very broad categories of excuses for usury.

In considering the *mutuum*, errors arise principally from a consideration of the nature of the *mutuum* contract. This proceeds along the line of considering the kind of things that fall within the scope of the *mutuum*, namely fungible things. Authors treat fungibility as a property of things themselves rather than a manner of treating things. Along these lines, money taken as the fungible object par excellence is treated as capital which can be rents undermining the whole usury doctrine.

The second major line of argumentation proceeds from the meaning of profits. Centuries of authors have dealt with this developing the theory of extrinsic titles. From these titles something over the principal can be taken not from the *mutuum* itself but for other reasons. However, over time the theory expanded to include various erroneous titles and became deeply problematic. Eventually authors began to assume that some just title is always present and so the usury doctrine becomes more of an interesting historical doctrine but with little practical and moral import.

Reese on Cajetan on Monetary Exchange

Posted on [September 25, 2019](#)

Fr. Philip Neri Reese wrote an article, [Cajetan's Economic Treatises](#). I haven't read the source material, so I'll focus on Fr Reese's comments.

The first treatise he examines is *On Monetary Exchange* (353-358). The principle distinction that Reese focuses on is the difference between spendible and non-spendible money. In the first case, the coins and such are *actually* money, that is a certain measures with a fixed legal value. In the second case, the coins are only *potentially* money and hence take on the character of a commodity. Hence the value in the second case can differ in space and time whereas the first is fixed. We can then treat of monetary exchange as the pertaining “to money as a measure” by acknowledging that non-spendible money is at least potentially money while accepting a rate of exchange between spendible and non-spendible money.

The first criticism is that the notion of spendibility is problematic in itself. It insufficiently determines the transaction. Consider that I want to exchange Euros for

dollars at an airport. I can easily engage in that exchange and some rate obtains between the currencies. However, I can walk from one part of the airport to another and spend either Euros or dollars. Both currencies are easily spendible, but they are not exchanged one dollar for one Euro. The spendibility of the money is entirely incidental to the actual transaction and hence cannot determine the nature of the exchange itself or its intrinsic justice.

This leads me to my second criticism. The problem that Cajetan appears to fall into is considering money as a class of property, that such and such coins are money by legal fiat whereas other things are not. The problem is that money is not a sort of thing but rather a manner of treating things, that is as a measure of value.

To make this clearer, consider another measure, namely time. There is no special class of mobile things that are time. Clocks, the earth's motion, etc. are not somehow essentially time in a way other mobiles are not. Indeed some mobiles are more useful as time than others, but they aren't more or less time than other mobiles. Time is a manner of using a mobile as a measure or standard for other motions. We measure human life in rotations around the sun. We measure laps around a track as clicks of a set of gears. The list could go on, but the point is that the measure is not some class apart from the others.

Indeed, the measure must contain in itself to some degree that which it measures. A thought or concept cannot be a measure of weight, for example. The sort of thing that is used as money is just another sort of property used as a standard for equating the multitudes of exchanged things, just as a particular mobile is a standard for equating the motions of different things. This sort of thing used as money could be shells, stones, gold, fiat currencies or other things, but the point is that there is not especially or essentially money about currencies issued by governments.

Having criticized Cajetan's understanding of money, how are we then to understand monetary exchange? Embracing the above sense of the nature of money indicates that monetary exchange does not differ from other sorts of exchange. Truly all exchange of property is barter, it is just that the use of a common measure makes the barter simpler and more efficient. But then we must explain why one hundred pennies is the same as a dollar and there is a rate of exchange between dollars and Euros.

Consider the example of possessing stock in Microsoft and Google. You actually possess several pieces of paper of each stock which represent increments of shares, for example one half, one, five, etc. shares in each company. Now those papers as stocks or securities represent a certain collection of claims against each of the companies. The value of two one half shares of Microsoft stock and one one share of Microsoft stock are necessarily equal, because as a security they represent the same amount of claim against the company. However, one share of Microsoft stock is not equivalent to one share of Google stock and some exchange rate between the two would obtain. This rate of exchange may differ in different places and different times for a variety of reasons.

In a similar way, we can think of dollars and Euros. A dollar is equivalent as a security to one hundred pennies, because they represent the same amount of claims against the US government. This is not a "fixed legal value" as if the US government compels it to

be so, but it is a necessity given the nature of dollars qua security. However, a particular rate of exchange obtains between dollars and Euros and these rates certainly vary by time and place and again this proceeds from the nature of each currency qua security.

Hence, we do not require the distinction between spendible and non-spendible money to understand monetary exchange. We can acknowledge and justify the difference in exchange rates between different kinds of property by looking to them as simply different kinds of properties. Simultaneously, we can affirm the “exchange rate” of unity for the same currency, recognizing this as a necessity of its nature as a security rather than by legal fiat.

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Research Notes – Fungibility

Posted on [September 3, 2019](#)

Both consumptibility in use and fungibility depend initially on human agreement. Consumptibility in use depends on agreement as to the primary purpose of a commodity; fungibility requires assent to a certain standard of quality. The usual scholastic examples of fungibility, grain and oil, are not fungible unless a certain origin and certain age are first assumed. One agreement has been reached as to use, a consumptible in first use does become a “natural category, if one accepts the scholastic view that accident and form may be distinguished, or even if one merely distinguishes between rates of durability. Fungibility remains much more a matter of convention than of nature. It is not simply a juristic way of saying consumptibility. The stock scholastic examples of fungibles were also consumptibles. But one can think of many goods which are as fungible as grain and which are not consumptibles in first use: paper clips are an easy example today. Even in an age of little manufacturing, there were many such examples: swatches of cloth, lead for ballast, young pigs, wool for packing. The scholastics’ imagination did not extend to them; or at least the scholastics failed to consider the difficulty of applying the usury rule to loans of such nonconsumptible fungibles. May one not infer that St. Thomas, more careful than his contemporaries in distinguishing the limits of natural law, believed that the natural law taught the sinfulness of usury only in the case of goods consumptible in use? If this is so, a large area of lending would be left outside the natural prohibition as he conceives it. (Noonan, Scholastic Analysis 57)

This is one of the more insightful things that Noonan has to say about usury. He takes this point to be detrimental to the usury argument, but if taken seriously and consistently with what Aquinas says it makes the argument clear, defensible and powerfully demonstrated. It is the contract that determines whether or not the items are treated as fungible or not. It is the contract that determines whether one party is conceded the authority to consume, that is alienate, the property or not.

Mutuum was defined in the preceding chapter as “the delivery of an article the qualities of which are fixed in number, weight, and measure with the intent that it immediately

become the property of the one receiving it with the obligation to restore an article of like kind and quality." This definition was elaborated for the purpose of bringing out the difference between a mutuum and other similar contracts. It was brought out that, though in practice the object of a loan of mutuum would commonly be a fungible or a consumption good, neither of these points was essential to a transaction of mutuum. Very durable materials could be lent and be the material of a mutuum, especially if they were fungible; and non-fungible goods could become the object of a mutuum by agreement—for example, a friend could lend me a horse and not care if the same animal were returned so long as he received one about as good. But when anything is loaned in such a way that the title of ownership passes to the borrower, so that the article becomes his and he is bound only to return the equivalent, then the contract is a mutuum. This essential point is obviously of paramount significance where money is concerned. First of all, with money as with many other consumable and fungible goods, the first use is the last; and with the use the ownership must go. There is no purpose in a loan of money if the borrower does not have complete dominion over it. Secondly, in the case of money, "observe that in a loan of money it is the value which it has as money that is chiefly taken account of; since the same kind, quality, and goodness is considered returned if money of the same value is returned." 02 Money is the object par excellence of a loan of mutuum, for with unimportant exceptions money cannot be loaned except on mutuum and it enjoys the highest fungibility.

The contract of mutuum is, as Lugo says, very simple in itself, as is clear from the definition and the examples. It is the most ordinary loan transaction, in which for whatever reason, the lender either cannot or does not retain the ownership of the thing lent but must be, or is, content to receive back not the thing lent but its equivalent. The entire difficulty concerning the mutuum hinges on the question of usury. "The whole justice or injustice of a mutuum consist in this, that usury does or does not intervene." 63 (Dempsey 164)

Dempsey here appears a good example of how confused the nature of fungibility and consumptability becomes. In his analysis, it is recognized that the nature of the property doesn't matter, but rather the transfer of ownership. However, the transfer of ownership proceeds precisely from treating the property as fungible and consumed in use. Unhinging the nature of the mutuum from how it treats property, makes the whole matter of usury unintelligible.

As this qualification of the term "fungibles" suggests, one must ascertain, in every particular loan, the use to which the thing loaned is actually to be put, as well as its general nature and the use to which it is ordinarily put or is capable of being put. We have seen that money, when loaned, is ordinarily but not necessarily involved in a loan of mutuum; as long as it is not going to be spent in exchange, it may be the object of a loan of commodatum. In this latter case, money is still a medium of exchange which is consumed in its normal use; it is still a fungible good, any unit of which has the power to serve in place of any other. The point is that in the individual transaction this particular money is not consumed in use because it is deposited rather than spent; one unit does not function in place of another because the money is not consumed in use but is returned identically to its owner. One may have, then, a good which is consumable but is not consumed in a particular loan (of commodatum), a good which is fungible but does not function, one unit in place of another, in the same loan. Hence, to decide whether one is dealing with a loan of mutuum or with a loan of commodatum, he must know not only

what use the goods loaned can be put to in general, but what use they are being put to in the transaction in question. (Herbert Johnston, "On the Meaning of 'Consumed in Use' in the Problem of Usury, The Modern Schoolman, Vol 30, page 101-102)

Johnston has a considerable edge over Dempsey and Noonan. He seriously applies Noonan's point to the issues that Dempsey considers. In this he recognizes that the nature of the property lent is insufficient in determining whether usury is present or not. It is the nature of the contract or transaction involved. Johnston unfortunately trips up significantly in other parts. He poorly and (in my opinion) incorrectly attributes an argument to Aquinas where usury proceeds from money as a measure, that, while present in the Commentary on the Sentences, is not found in his most mature works. Also, ultimately he sees "consumed" as "irrevocably mixed up." He does this apparently to resolve problems raised by Dempsey, however, these are irrelevant when we take seriously the above consideration. The contract is the normative element defining whether the return is in kind or in particular, from this proceeds the transfer of ownership and the consequent possibility of usury.

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[Usury in Traditional Catechisms](#)

Posted on [November 4, 2019](#)

[A Summary of Christian Doctrine by St. Peter Canisius \(1555\)](#)

"16. What are we taught in the Seventh commandment?

It forbiddeth all unlawful handling and usurpation of an other mans goodes, by theft, robbery, simony, usury, unjust lucre, cosenage, and any other contracts, whereby brotherly charity is hurte and our neighbour by craft circumvented. On the contrary part this precept requireth that in all business and trasique whatsoever, justice be kepte inviolate, and that the profite of our neighbour when occassion serveth, by almanmanner of meanes or helpe of our part be aduanced." (pg 82-83)

[Catechism of the Council of Trent \(1566\)](#)

"To this class also belong usurers, the most cruel and relentless of extortioners, who by their exorbitant rates of interest, plunder and destroy the poor. Whatever is received above the capital and principal, be it money, or anything else that may be purchased or estimated by money, is usury; for it is written in Ezechiel: He hath not lent upon usury, nor taken an increase; and in Luke our Lord says: Lend, hoping for nothing thereby. Even among the pagans usury was always considered a most grievous and odious crime. Hence the question, "What is usury?" was answered: "What is murder?" And, indeed, he who lends at usury sells the same thing twice, or sells that which has no real existence."

[A Catechisme, Or Christian Doctrine by Fr. Laurence Vaux \(1567\)](#)

"Thirdly, by usury in lending money, to the intent to have the same sums of money again with gains either in money or money worth (Psal. 14). All such usurers are bound to make restitution to the party. Yet he is urged with great necessity, & can help himself by no other means, does not offend in borrowing money & promising gain."

[Catechism of St. Robert Bellarmine \(1649\)](#)

[No explicit discussion of usury]

“Student: Declare the seventh commandment.

Teacher: The seventh commands that no man take away the goods of others secretly, which is called theft, nor manifestly [openly], which is called robbery; nor commit any deceit in selling, buying, and like contracts; and finally do no harm to his neighbor in his goods.”

[Douay Catechism by Henry Tuberville \(1649\)](#)

“Q506. What is usury?

A. It is to receive, or to hope for some money or moneys’ worth, as gain, above the principle, immediately out of the consideration of loan.”

[Hay’s Catechism](#)

[No explicit discussion of usury. Discusses 10 commandments only generally.]

[A complete catechism of the Catholic religion by Fr. Joseph Deharbe \(1847\)](#)

“6. Who are guilty of usurious practices?

1. Those who exact unlawful interest for money loaned; 2. Those who purchase in large quantities articles of food and other necessities, in order to obtain more than a just price for them; 3. In general, those who in trade take unfair advantage of their neighbor’s ignorance or necessity.”

[Catechism of Perseverance by Fr. Francis Jamison \(1849\)](#)

“Q. What is fraud?

A. We are guilty of fraud when we deceive our neighbor in buying or selling; in seeing as good, articles which are damaged; in making use of false weights and false measures; in making usurious bargains, &c.”

[Catechism: doctrinal, moral, historical, and liturgical by Fr. Patrick Power \(1864\)](#)

“Q. Is there any other particular vice by which we injure our neighbour in his property?

A. Yes; we injure our neighbour in his property by usury.

13. By the word usury is meant any reward or profit which we take for the loan of money, or of any other good for consumption, solely on account of the thing lent. The reward received from this source is called interest. Thus, the interest on a loan is what we receive over and above the money lent. Where grounds extrinsic to the loan actually exist, a moderate interest is allowable, or such interest as is allowed by the state. To take more than a moderate interest, or more than is determined by the state, for what we lend, whether in goods or money, is usury. Those, then, are guilty of usury, and of the very worst description of usury, who take exorbitant interest from the poor for money lent them in their distress. Those, also are guilty of this crying sin who lend

mean, corn, potatoes, or any other goods which are consumed in the using of them, and demand an exorbitant and illegal profit for the use of them.

14. Usury is, of its own nature, a mortal sin, whether practised on the rich or on the poor. The Holy Scriptures, in a great many places, condemn usury in the most formal manner: 'Thou shalt not lend to thy brother', says God in the book of Deuteronomy, 'money to usury, nor corn, nor any other thing' – Deut. xxiii. 19. The prophet Ezechiel thus speaks of usurers, murders, and robbers: 'He that is a robber, a shedder of blood that giveth upon usury, and taketh increase; shall such a one live? He shall no live he shall surely die; his blood shall be upon him.' – Ezech. xviii. 13. In the gospel of St. Luke our Saviour tells us to lend, but without hoping anything for the loan: 'Lend, hoping nothing thereby' – Luke. vi. 35. That is, we must hope for nothing merely as a reward for the use of our money lent. When we lend money out, we surely are allowed to take some interest, but that interest is not to be considered solely as the reward or recompense for the loan, but just as a compensation for the loss one sustains by not having the money in his own hands, or the danger to which it is exposed while it remains in the borrower's hands.

15. The Fathers of the Church have ever raised their voices against usury, and openly declared that everything we receive over and above what we lend, solely on account of the loan, is an injustice. 'Usury' says St. Basil, 'is the cursed daughter of covetousness, and of attachment to the goods of this world'. All the Councils have equally condemned usury. The second General Council of Lyons held under Gregory X., excommunicated usurers; and the General Council of Vienne, under Clement V., gravely censured all those who should support that usury was lawful. The Sovereign Pontiffs, up to even Pope Pius IX., have invariably maintained the doctrine that usury could not be allowed. Usury is, then, condemned by the sacred Scriptures, by the traditions of the holy Fathers of the Church, by Popes, and by Councils. Therefore, usurers who receive, without any legitimate title, interest on the money lent by them, receive that which belongs not to them – they appropriate the goods of others, which if they restore not, they can never enter the kingdom of heaven."

[Familiar Explanation of Christian Doctrine by Fr. Michael Muller \(1874\)](#)

"Q. Who are guilty of cheating their neighbor?

... 7. Those who charge too much interest in lending money, or sell provisions to the poor on credit, and overcharge them."

[Baltimore Catechism No. 4 \(1885\)](#)

[Usury is never mentioned.]

"You violate it also by not paying your just debts... Moreover, besides the injustice, it is base ingratitude not to pay your debts when in your power to do so. The one who trusted or lent you helped you in your need and did you a great favor, and yet when you can you will not pay, and what is worse, frequently abuse and insult him for asking his own. Though such dishonest and ungrateful persons may escape in this world, they will not escape in the next, for Almighty God will make them suffer for the smallest debt they owe."

[Letters on Christian Doctrine by Fr. Francis De Zulueta \(1897\)](#)

[Usury is never mentioned]

“To constitute theft, it is not necessary that the goods in question should actually be removed from the possession of their lawful owner by fraud. This is clear in the case of loans or borrowing. I may have borrowed from another with his full knowledge and consent. Nevertheless, I am dishonestly robbing him of the use of his own property if I retain the loan longer than the period agreed upon. Possibly, contrary to my expectation at the time of borrowing, I may find myself unable to return the loan by the proper date. Of the moral aspect of such inability something will be said further on. But it is useful to observe here that a man is dishonest in borrowing what he sees no reasonable hope of being able to repay.”

[The Catechism Explained by Fr. Francis Spirago \(1899\)](#)

“4. Usury consists in making use of the needy circumstances of another to one’s own profit (Exod. xxii. 25).

The usurer is called a money-lender, if he lends money at a high rate of interest to one who is pecuniary difficulties, or a speculator, if he buys up corn and keeps it until a time of scarcity, in order to sell it at a high price. Under the appearance of helping a man in need, the usurer involves him in a greater complications. He is like a doctor who instead of strengthening his patient, saps the little force he had; or like a spider that weaves a web more and more closely round the unhappy fly and sucks every drop of its blood. usurers are murderers of the poor; they take from them their means of livelihood, and thus deprive them of life.”

[Catechism of St. Pope Pius X \(1908\)](#)

“11 Q. How is usury committed?

A. Usury is committed by exacting, without just title, an unlawful interest for money lent, thus taking an unfair advantage of another’s need or ignorance.”

[Catechism of the “Summa Theologica” by Fr. Thomas Pegues \(1922\)](#)

“What is usury?

Usury is an act of injustice which consists in taking advantage of the need of our neighbour by lending him money, or any other thing that has a money value (whose only use is the consumption thereof which is destined to meet present necessities), and in return obliging him to give back the money or the thing lent by a fixed date with an addition as the price of the use (LXXVIII. 1, 2, 3).

Is usury the same thing as lending out at interest?

No; for although all usury is lending out at interest, all lending out at interest is not usury.

In what does lending out at interest differ from usury?

It differs from usury in so far as money is considered as productive, by reason of the social and economic circumstances in which we live to-day.

What is necessary in order that lending out at interest may be allowable and may not run the risk of becoming usury?

Two things are necessary: first, the amount of interest charged must not exceed the legal charge, or the charge fixed by reasonable custom; and second, those who are well off should not be exacting towards the poor who have need of borrowing, not in order to trade in money but with the object of immediate consumption and the succouring of their needs."

[The Catechism of St. Thomas Aquinas \(pub. 1939\)](#)

"The fourth kind of theft is fraud in buying and selling: "You shall not have divers weights in your bag, a greater and a less" [Deut 25:13]. And again: "Do no unjust thing in judgment, in rule, in weight, or in measure" [Lev 19:35-36]. All this is directed against the keepers of wine-shops who mix water with the wine. Usury is also forbidden: "Who shall dwell in your tabernacle, or who shall rest in your holy hill?... He who has not put his money out to usury" [Ps 14:1,5]. This is also against money-changers who commit many frauds, and against the sellers of cloth and other goods.

[But you may object: Why can I not give money, just like a horse or a house? Answer: In money the sin is that an item is sold twice. But in a house there are two items: the substance and the use. It is one thing to have a house, and another to use the house. So I can sell separately the use of a house without selling the house itself. The same for such like. But for things that consist in the use alone, and the use alienates the item, the same distinction cannot be made as with a house. We use money by alienating it, and food by consuming it. Therefore if you sell the use, you are selling twice.]"

[Ferrara and Usury](#)

Posted on [April 20, 2020](#)

Recently I started taking a look at Christopher Ferrara's book, [*The Church and the Libertarian*](#). I noticed it has a short chapter on usury and Ferrara is a Catholic traditionalist, who are generally known for their firm knowledge of Catholic Teaching. However, reading this brief chapter gives entirely the opposite impression, because Ferrara gets almost nothing correct about usury, starting from the first sentence: *The Catholic Church has always condemned usury, which in its broadest sense embraces, not just the taking of interest, but any form of unconscionable financial exploitation...* (pg 151 emphasis mine)

The first clause is obviously true from a brief review of Church documents, but the final is detached from the tradition, whether Scholastic or Magisterial. Philosopher, canonist and theologian one after another have said the same thing about usury: it proceeds only from a [*mutuum contract*](#). Moreover, [*Vix Pervenit*](#) makes it very clear that the source and origin of usury is the *mutuum*.

Having failed to acknowledge this central point, Ferrara repeats the mistaken characterization that usury is pivotal around the nature of money.

Like Aristotle, St. Thomas was writing at a time when money was merely a means of exchange and did not produce investment income in financial markets or lose value over time due to inflation. (pg 152, emphasis original)

We must reject the notion that St. Thomas did not see that money lent could be put to profitable enterprises as he recognizes this in his [Commentary on the Sentence](#) (lib. 3 d. 37 q. 1 a. 6 ad 4). That this is mediated through financial markets is entirely accidental. Ferrara goes on to discuss the theory of extrinsic titles. Here he writes:

The moral permissibility of such “titles” [as referenced by Vix Pervenit] to additional payment was a matter of common sense as developed in Scholastic teaching on usury. (pg. 154)

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Referring to these titles as “common sense” strongly ignores and misrepresents the tradition. Of the titles, *damnum emergens* received the most universal approval, but Ferrara fails to mention this one. He mentions only *lucrum cessans* which was hotly debated for centuries, and rejected by no less than Aquinas ([ST II-II q. 78, a. 2, ad. 1](#)). It is also notable that inflation did not enter here and Ferrara provides no reason why inflation would have been relevant to Aquinas in the quote above.

He then goes on to discuss other sorts of contracts referenced by *Vix Pervenit*. According to Ferrara’s translation, *Vix Pervenit* reads:

Nor is it denied that it is very often possible for someone, by means of contracts differing entirely from loans, to spend and invest money legitimately either to provide oneself with an annual income or to engage in legitimate trade and business. From these types of contracts honest gain may be made. (pg. 154, emphasis original)

Following the tradition that usury arises only from a *mutuum* and therefore any contract that doesn’t involve a *mutuum* is *ipso facto* non-usurious, Benedict XIV teaches that profit can be derived licitly from these other sorts of contracts. Ferrara on the other hand appears to mix the theory of extrinsic titles with this essence of usury. *Other titles would arise when the loan was actually a lender’s investment in a partnership (societas) in return for a share in the profits, or for the purchase of an annuity (census) or government bond (mons), or to finance a future sale of goods at a higher price than the amount loaned (another form of investment or profit-sharing).* Ferrara refers to these other types of contracts as titles in apparent connection with the theory of extrinsic titles. Moreover, he treats the other contracts as if they were loans. It may be that these could involve usurious contract, such as the triple contract or personal census. However, to speak so generally and without specific qualification is simply to conflate different sorts of contract that Benedict explicitly meant to differentiate, since they “differ entirely from loans” and are not other titles arising from a loan.

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Before entering into his criticism of Austrian economics, Ferrara ends with a statement that is difficult to reconcile with orthodox teaching. He writes:

... [Under present economic circumstances] a new “title” to compensation for money advanced has arisen because money has in itself become an income-producing asset for

which it is just to charge a reasonable “rental.” But this development does not change application of the dogmatic condemnation of usury in cases where an excessive and thus immoral rate of interest is charged. (pg. 154 emphasis original)

In the first, it must be denied that “money has in itself become an income-producing asset.” This is simply and manifestly false. I have dollars in my wallet that have yet to produce any income. The distinction is that money today can be easily used to purchase claims or titles to real income producing assets. These investments may be hidden behind layers of abstraction and digital mechanisms, but the fact remains the money does not produce income, but rather the assets.

To refer to charges as a “rental” becomes dangerously close to proposing that there is an intrinsic title to profit on a *mutuum*. This compounded by the notion that money has changed its nature as money itself is lent. Moreover, the notion of usury as *excessive* interest on a *mutuum* is itself condemned by *Vix Pervenit*. In sum, Ferrara is mistaken about the teaching on usury, its content and development.

Posted in [Books](#), [Usury](#) | Tagged [Christopher Ferrara](#), [Mutuum](#), [Traditionalism](#), [Vix Pervenit](#) | [Leave a reply](#)

Fr. Divine on Aquinas and Usury

Posted on [April 15, 2020](#)



Fr. Thomas Divine, S.J. has a relatively good grasp of Aquinas’ argument against usury. He makes a critical error in his understand that ruins the whole.

*Aquinas’ analysis, as we have seen, is centered upon the distinction between fungible and non-fungible or perishable and durable goods **[This is the substance of Divine’s error]** (rather than non-productive and productive, as some have interpreted it).*

Fungible goods are those whose use is identified with their consumption; non-fungible goods are those whose use is distinct from their consumption. Money is a fungible good, for its chief purpose, as a medium of exchange, is to be spent; once it is spent it ceases to exist as far as the spender is concerned. In the words of Aristotle, it is “sterile,” incapable either of reproducing its kind or of affording any utilities of its own. In the case of a durable good, justice requires, in addition to the return of the object lent, a payment for

*the use of the object during the time it was in the borrower's possession. But to charge for such a use in the case of a consumption good would be to demand payment for something which does not exist. In this case, the equivalence of justice demands that only the amount of the loan be returned. Neither can one charge for the time between the loan and its expiration, for time is a free gift of God to which the lender has no exclusive title. Hence, by virtue of the equality of values between things exchanged demanded by commutative justice, the contract of mutuum (loan of fungible goods) **Treating the mutuum as a loan of a kind of good is a corollary error** is essentially gratuitous. Neither can the lender claim in justice any share in the profit which may accrue to the borrower as the result of a mutuum because the mutuum necessarily implies the surrender not only of dominion but also of ownership to the borrower... One has no claim to what is no longer one's own.... (page 214)*

What Divine gets right is that in the *mutuum*, the borrower becomes the owner of the thing, because he can use it up (i.e. essentially dissolve his ownership either physically or morally). Because of this the lender has no claim to what has become the property of the borrower. To charge more is to charge for a title that the lender does not possess.

What he gets wrong is that fungibility is part of the nature of an object. Aquinas clearly allows that money be rented and that even a silver vessel or pair of shoes could be rented or loaned in a *mutuum*. These last two are obviously not "consumption goods" but rather durable and in a sense productive. In the *mutuum*, the vessel or shoes can be used up in exchange in which case they "cease to exist as far as the borrower is concerned."

However, Divine takes a strange turn. He proceeds to spend sometime discussing the value of money.

For money as a medium of exchange has but a representative or derived utility. Its significance is derived from that of the commodities which it represents and for which it is exchanged. In this sense, money may be either a non-productive or productive good. It represents both. In an actual exchange, its significance will be either that of a consumption good or a production good according to the nature of the good it purchases. Hence the act of exchange is not the end but the beginning of the significance of money.

Yet by the very fact that money serves as a universal medium of exchange, it fulfills the added function of a store of value, a means of satisfying all wants in the future, especially if those be of an unforeseen or uncertain character. In this sense, money possesses not a mere derived or representative utility, but a distinct commodity value of its own. As such a commodity, it is not fungible but a durable good, giving off a continual flow of services during the period of its possession, for were its utility not greater than that of the commodities it represents, it would not thus be retained in liquid form. (page 214-215)

This kind of logic would seem to lend itself toward treating the *mutuum* of money as a sort of rental or *locatio*. If money is a durable rather than fungible good, according to Divine's mistaken premises, a loan of money would not be a *mutuum*. However, his defense of this derives from his treatment of the "significance" and "representative" value of money which is quite bizarre. Money takes on a productive significance because it can be exchanged for productive goods. As Clearly quips: does money take on an explosive significance because it can be exchanged for dynamite?

Ultimately, Divine wants to establish that money has a greater value now than in the future ([Innocent XI's condemnation notwithstanding](#)). From here he returns to the *mutuum* in spite of just showing a loan of money is not a loan of a fungible good. On the assumption that [a *mutuum* is a sale](#), he criticizes Aquinas for not acknowledging the Austrian purely subjective time preference in exchange. Here Divine can accept Aquinas' logic that ownership is transferred but that the goods exchanged are not equivalent. The lender is not making a claim beyond what is his own, but a claim in justice to the equivalence of return.

Divine also goes on to propose that Aquinas accepted equivalence in quantity for the reason that no good standard exists. Outside the presence of competitive markets and in isolated exchange, there is no objective[1] standard for establishing an exchange ratio between present and future goods. This attributes to Aquinas a mere ad hoc move in insisting that exact quantity be returned, because no easy standard is available. Moreover, Aquinas argues in bad faith with the motive of protecting the borrower. Of course the error is in Divine's assumptions, both economic and Thomistic.

Overall, Divine articulates the argument against usury better than most. However, he makes significant mistakes regarding fungibility and the nature of the *mutuum*. He proceeds along a strange course in showing a loan of money is not a *mutuum* but then returns to Aquinas to accuse him of fallacious reasoning and dishonest motives. Aquinas' argument read charitable and in entirety[2] dispel much of Divine's misinterpretations and mistakes.

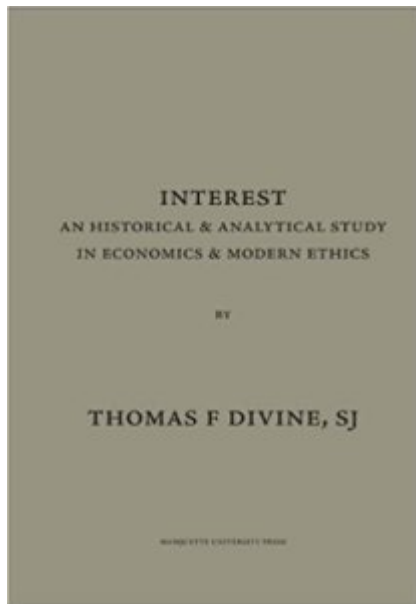
[1] Divine's use of "objective" is an equivocation. He proposes that the aggregated subjective valuations of the market participants are objective in the sense required by justice. This is obviously false. The "objective" nature of market pricing consists in that they are publicly witnessed, whereas they are subjective in that they represent what participants are willing to pay rather than what is just to pay.

[2] Reading all of the responses in the Summa Theologica and the question in the De Malo leaves little doubt that Aquinas does not believe usury pivots on the nature of the property lent.

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Interest by Fr. Thomas Divine, S.J.

Posted on [April 14, 2020](#)



Fr. Thomas Divine's work, [*Interest: An Historical and Analytical Study in Economics and Modern Ethics*](#), is an important work. It is a sustained effort to show that there is an intrinsic title to usury. This ultimately means that one can charge usury from the very act of lending, or, usury is not intrinsically evil. This runs contrary to several hundred years of moral philosophical and theological reflection. Thus, the audacity of Divine to take such a stance should be sufficient to peak the interest of those concerned with the question.

One could approach Divine's book by a careful analysis of his historical review and economic arguments. This would not be without some measure of value. Like most authors, he provides a broad overview of the two millennia of reflection on the usury problem. In the course of this review, he inserts his views and interpretations of prior authors, including their putative errors and incorrect assumptions (at least under present circumstances). He goes on to propose a broadly Austrian economic theory as developed by Anthony Fischer and Friedrich Hayek. From this he goes on to argue that usury is not only permissible but demanded by commutative justice under present circumstance.

Now his analysis is certainly problematic and his economic theory as Austrian is not without criticism. However, we need not delve into this to see the principle of Divine's error. Hidden within the few hundred pages Divine briefly remarks: the *mutuum* "is really a sale, and as such it is governed by the principle of just price." (pg 216) The whole edifice of Divine's argument is based on this very significant error. Yet, it is only mentioned within the context of his interpretation of Aquinas. From this misunderstanding Divine goes on to explain the assumptions he thinks Aquinas must hold to justify the condemnation of usury and those assumptions' irrelevance under modern circumstances.

Divine makes this argument on the basis that ownership transfers in the case of a *mutuum*. However, while transfer of ownership is necessary for a sale, it is clearly not sufficient for a gift or *donatio* transfers ownership, yet is not a sale. Divine might remark that the gift is a unilateral contract whereas the *mutuum* and sale are bilateral agreements. However, if we must consider more of the nature of the contract than the simple transfer of ownership, let us consider the whole nature of the contracts. On the whole, the nature of a *mutuum* differs more from a sale than it does from

a *locatio* which is a rental. A full treatment of the nature of each contract would show that they are essentially different.

With this established, the consequent of Divine's above remark does not necessarily obtain. Indeed usury is not merely a matter of just price, but is distinct from it. This is confirmed by Aquinas who treats usury and cheating as specific sins against commutative justice, rather than usury being a species of cheating. We need not establish here why they are different, but only note that Divine's insistence fails and with it his whole justification for usury.

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Prummer, Extrinsic Titles and Lateran V

Posted on [April 14, 2020](#)

1

Usura definitur a S. Thoma: "Acceptio pretii pro usu rei mutuatae" [ST II-II q. 78, a. 1], vel obiective considerata: "Pretium usus rei mutuatae." Latius hanc definitionem explicat Concilium Lateranense V, sess. 10: "Ea est propria usurarum interpretatio, quando videlicet ex usu rei, quae non germinat, nullo labore, nullo sumptu, nullove periculo lucrum foetusque conquiri studetur." – Essentia igitur usurae consistit in acceptione lucri ex puro mutuo. Si enim lucrum accipitur ratione alterius tituli extrinseci, e. gr. damni emergentis, periculi etc., non est usura.

Manuale Theologiae Moralis, Vol II by Dominic Prummer, page 242

<https://archive.org/details/PrummerManualeTheologiaeMoralisII/page/n125>

Usury is defined by Saint Thomas: "The acceptance of a price for the use of a thing lent", or objectively considered: "A price of use of a thing lent." More broadly Fifth Lateran Council session 10 explains this definition: "This is the proper interpretation of usury, when namely from the use of a thing, which does not grow, without labor, expense, or risk, profit and gain is sought to be collected." The essence therefore of usury consists in the acceptance of profit from a pure mutuum. If profit is accepted by another reason of an extrinsic title, e.g. damnum emergens [loss emerging], risk, etc., it is not usury.

My translation.

This passage is interesting because it is one of the first places that appears to attribute some degree of approval of extrinsic titles to the Fifth Lateran Council. Prummer does not say explicitly the Council's statement of labor, expense and risk are correlated to the various extrinsic titles, but the adjacency is very suggestive of his thoughts.

Of course the Council does not approve of the extrinsic titles and there are several logic leaps that must be established before getting there. Logical leaps which I would argue are not justified by the text or the history of the question.

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Tentative Usury Syllogism

Posted on [May 29, 2020](#)

1

1. Usury is profit from a mutuum.
 2. A mutuum is a loan of a good to be returned in kind at a later date.
 3. A good returnable in kind is treated as fungible.
 4. A good treated as fungible is treated as alienable.
 5. A good treated as alienable is transferred with the entire ownership and not merely use.
 6. A mutuum is a loan where the entire ownership is transferred.
 7. If ownership is entirely transferred, then the prior owner had no further claim to it.
 8. A mutuum is a loan where the lender has no further claim to the thing lent.
 9. Usury is profit from a loan where the lender has no further claim to the thing lent.
 10. Profit without a claim to the good is contrary to natural justice.
- QED. Usury is contrary to natural justice.

Posted in [Exposition, St. Thomas Aquinas, Usury](#) | [1 Reply](#)

The Traditional Stool and Usury

Posted on [May 6, 2020](#)

Dr. James Chastek makes an [interesting observation](#) about a [recent article](#). If I can sum it up, the traditionalist main talking point is that we are in a crisis like no other, look at the heterodoxy in sexual ethics. This can all be derived more or less from Vatican II. However, the article never takes the step of actually showing any of this is really unprecedented. It simply asserts this is the worst crisis the Church has faced. Presumably a return to the TLM will bring us back to the pre-Conciliar sanity. All that aside, widespread and long-lasting heterodoxy is not something particularly new to the history of the Church. Chastek cites the most obvious example of the Arian heresy in the early Church. As this site is dedicated to usury, I would put that forward as another example.

The moral theologians of the 16th century on arguably (and I argue) proposed heterodox positions with respect to the teaching of usury. From my reading most of them attempted to frame excuses for usury as nominally forms of compensation for

loss, but actually and formally those excuses were for profits on a *mutuum*. The hotly debated excuse of *lucrum cessans* is a primary example, where the lender “loses” something that never existed (and never will). However, since this is really not a loss, he really profits from a *mutuum*, which is usury.

Additionally, we see various prominent theologians flouting or denying papal authority on the matters. In the case of the *Montes Pietatis*, Domingo de Soto claimed that “either the [Fifth Lateran] Council did not have authority to decide purely philosophical issues, or that not all of the decrees of the Council have been received.”[1] Various authorities dismissed such documents as [Cum Onus](#) [2], [Detestabilis Avaritia](#) [3] and [Vix Pervenit](#) [4] as either not pertaining to their country or that the document wasn’t about natural but rather positive law. Moreover, it is reliably certain that 99% [5] of all Catholics have no qualms with usury or have a false understanding of it. Moreover, on Noonan’s historical reckoning this has been the case for some centuries. Additionally, the questions submitted to the Holy Office in the 19th century themselves indicate that bishops not only supported the absolution of unrepentant usurers but may have been involved in usury themselves.

Hence widespread heterodoxy among the laity and even the clergy is not something unprecedented, even in the nostalgic days of pre-VII TLM.

[1] Noonan, *Scholastic Analysis of Usury*, 300.

[2] Noonan, 238.

[3] Noonan, 221. “Since the bull was received nowhere, it had, insofar as it was positive law, no force whatsoever.”

[4] Noonan, 357.

[5] As with most statistics I just made this up, but since the Church has at least one billion members, one percent would constitute ten million people. I’m not that confident that the usury teaching is even considered by that many people, let alone understood and acted upon.

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Selling Property, Not Feelings

Posted on [May 5, 2020](#)

I often think about what I suppose to be weaknesses in my arguments against usury. Often these are only apparent weakness and end up only being details that need to be worked out more explicitly. One such detail is what can be bought and sold.

I often take for granted that opportunity cost or risk cannot be sold because they cannot be alienated from the possessor. At first glance, it is not clear why this is the

case and this because the detail has not been worked out. Put differently: why must something be alienable to be sold?

Let's take the most uncontroversial case, namely, the simple sale of something. Suppose that I sell you my baseball card. What has occurred in this transaction. You grant me some property and I grant you some. I am not longer the owner of that thing, it has been alienated from me, just as your property has been alienated from you. If it could not be alienated from me, then you could not become the owner of it.

Let's then take a segue into the nature of property. Property is not essentially the thing passed between us. It is a particular sort of authority over the thing. I am a proprietor because I have property, that is I have authority to command what others with respect to the things I own. If I am the proprietor of a business, I can command you to leave or behave a certain way in my establishment or what have you. Like all human authority this is limited, but property is essentially authority over others and only about the thing. Consequently, when we exchange, we are trading authorizations over the things passing between us.

This helps to make more clear the case of rentals. What I grant you is a certain set of my authorizations in exchange for something from you. Typically these are certain rights to exclusive use for a period of time, but they may also be burdened by other restrictions and claims. In this light, it can become clear the limits of sales, because if my authority is burdened by the claims of another, such as in a mortgage, my title to the property and ability to exchange it may not be unimpaired even when I am in possession of the object.

So now we see that exchanges involves the granting of authority with respect to certain things. Now since authority itself is in a certain sense immaterial, the things do not necessarily need to involve physical things. I have a real set of authorizations to a trademark if I own a brand name and that is really property.

Now even with this denial of a physicalist theory of property, I deny that opportunity cost or risk can be sold or rented. Opportunity cost can be treated either objectively or subjectively. Objectively it is a counterfactual. It is the state of affairs that could have obtained should things have been different. As such it is objectively a non-being, because it represents something that will never happen. One cannot own something non-existent anymore than one can own an imaginary bridge. I cannot command another to stay off my bridge or pay for its use when it doesn't exist.

Now subjectively it means that suffering that a person endures from missing out on an opportunity. Life is limited and there are only so many things that we can do and so there is a certain sorrow with giving up one path for another, even if the other is better in some respect. However, there is no way that I can come to own or make use of your sorrow in the relevant sense. The fact that your opportunity cost means you *want* more for something does not obtain to an objective claim that you are *owed* more. And that is the crux of the matter.

Risk may be treated similarly. Objectively risk is the potential for something to happen. For example, there is a potential that your car will be destroyed. However, that risk is not separable from the car itself as a material object. An insurance

company doesn't transfer the risk away from you and not even the financial risk, because you still suffer it when your car is destroyed. The insurer merely makes up a certain amount of the loss based on the terms of the contract. Subjectively risk may be taken as the fear of loss or unexpected changes. Here again you cannot charge for your fear (Juan de Lugo's opinion notwithstanding*) because it is not something I can own, because I cannot take it from you.

In the end, the burden of proof is on the one who claims that opportunity cost or risk can be charged for. The problem is that they have been accepted so long that they otherwise go unquestioned and the rejection of them meets with ideological rather than rational responses.

* "... Lugo, with Medina, replies that the loss caused by risk may be distinguished from the principal itself and is not compensated for by the simple return of the principal. The loss caused by risk is the mental anguish and fear which the lender suffers while his good is in his borrower's hands... He may even charge for his imaginary fears; the price asked is for mental anguish and should be proportionate to it." (Noonan, Scholastic Analysis, 288) Irrational fear grounds rational justice.

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Hungarian Loans for Babies

Posted on [July 31, 2020](#)

2

I recently exchanged [tweet](#) the recent decision of the Hungarian government to offer subsidized loans on the condition that the borrowers have children over the course of a few years. I thought this was manifestly evil, because it is a contract that obligates the debtors to have children or pay interest. Apparently my position was disagreeable, because it is more important to incentivize having children than to treat people as persons rather than property.

Reading through the tweets again, I notice that no one objected or refuted my claim that this is a claim that obligates under pain of financial duress to have children. Most of the objections were that this incentivizes having children and props up a dying civilization. These are no doubt good ends, but my argument was about the means which no one seemed interested in considering.

Here are some of the details from a Hungarian [website](#) with a Google translation. *All married couples, where the wife is between 18 and 40 years old and at least one of them has an insurance relationship for 3 years (the student relationship also counts as such), can apply for an interest-free, free-use loan of up to HUF 10 million [~30,000 euros] at bank branches.*

It can be applied for between 1 July 2019 and 31 December 2022.

The installment of the loan is a maximum of HUF 50,000 per month, with a term of 20 years.

If at least 1 child is born into the family within 5 years, they do not have to pay the installments for 3 years and become entitled to interest-free repayment for the entire term.

If the second child is also born, repayment is suspended for another 3 years and 30% of the debt is released.

If the third child also arrives, the entire remaining debt will be released.

The first thing I would point out that apart from the child bearing obligation, the loan is strictly a *mutuum*. The loan is “free-use” which I take to mean the couple can use it for whatever they see fit and there is no reference to collateral involved in this.

Therefore, any profit on these contracts would be usury.

If the couple does not fulfill their commitment?

Then, on the one hand, the interest subsidy has to be repaid and, from now on, the repayment of the remaining principal becomes at a market-like interest rate. For example, if no child is born within 5 years or divorced earlier than 5 years (and no child is born), the interest subsidy valid until then must also be repaid in a lump sum within 120 days (approximately 4 months) or from then on at a market-like interest rate. becomes the repayment of the remaining share capital.

Pursuant to the government decree published in the Hungarian Gazette on 29 May 2020, in the case of widowhood, the interest subsidy of the Baby Waiter will not be terminated even if the couple has not had a child within 5 years.

guarantee

The state guarantees the loans disbursed, and reimburses the interest subsidy and the childbirth credit to the banks. At the same time, the beneficiaries pay a guarantee fee to the central budget for the outstanding amount of the loan, together with the monthly installment to be paid through the credit institution. The rate of the guarantee fee is 0.5% of the amount of the outstanding obligation covered by the guarantee per year. The credit institution shall, within 15 days of the disbursement of the loan and thereafter until 31 January of each year from the year following the termination of the loan agreement, determine and communicate in writing to the beneficiaries the amount of the monthly installment plus the guarantee fee.

So the guarantee is provided by the state, but since it is in place of the individual for the debt, in return the claimant has to pay the detailed guarantee fee to the state.

The state guarantees the loan and reimburses the bank as long as the borrowers continue to meet their child bearing obligations. If they fail to have a child, then they have to repay the subsidized interest and repay the loan at market rates. From this it sounds that the contracts are usurious, even if the government agrees to subsidize the usuries for a time.

Dr. Levi Russell made [the claim](#) on Twitter that Dr. Brian McCall had argued that the state could charge interest on these loans in virtue of the power to tax. He further [suggested](#) that the Hungarian loans were at least analogous to the *Montes Pietatis*. These two taken together seem to very confused.

In the first, the *montes* that McCall discusses in relation to the state's power to tax were forced bonds upon citizens. That is the city-state leadership would conscript citizens' wealth and paid them an annual gratuity to prevent further upsetting citizens. These *montes* clearly have nothing to do with the Hungarian loans. It is also simply implausible that the state's taxing power excuses it from engaging in usurious loans. In contrast, the *Montes Pietatis*, approved by the Fifth Lateran Council, were charitable pawnshops. The loans were given out to poor in exchange for some collateral that backed the loan. Consequently, these were not *mutuum* loans. In any case, the loans part of the Hungarian program are commercial for-profit loans (i.e. usurious) that are subsidized by the state. They do not have an plausible relation to *Montes Pietatis* loans, since they are neither charitable nor collateralized.

However, to me that is a secondary point. The agreement that you reach with the state is that they will subsidize and guarantee this usurious loan on the condition that you have children. What this comes down to is that the agreement contractually obligates a couple to have children in return for financial payments and benefits.

This amounts to the state making a claim on the couple using their reproductive organs to produce children. This is the type of thing that sits in the same genus as slavery, because there is a claim against people making people. Put differently, the state is not paying the couple to build a wall or perform some economic service, but to make children. Reproduction has been subjected to financial payment. Insult is only added to injury by the fact that if the couple doesn't produce children, they must not only repay the state's subsidies but continue to pay the usuries for the duration of the loan.

I might be entirely wrong-headed about this (obviously I don't think so), but no one challenged this claim. What was argued was that the end was good, rather than means.

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Mutuum and Usury – Molina

Posted on [July 30, 2020](#)

Cum mutuum (ut patebit) quasi sedes ac fundamentum usurae sit, ordo ispe disciplinae postulate, ut de usura hoc loc disseramus. (Google Books page 133: Book 3, Disputation 303, Paragraph 1)

Because [a] mutuum (as will be shown) is as [the] seat and foundation of usury, [the] order itself of discipline [i.e. immediately following disputations on the mutuum] demands that we discuss about this usury [in] this place. (my translation)

This is important because it is the same language that Benedict XIV uses in the encyclical *Vix Pervenit*. Molina sees that it is necessary to discuss usury immediately after the *mutuum* precisely because the *mutuum* is the seat and fundament, beginning, foundation, basis, etc. of usury. Molina said this well over 100 years before the encyclical.

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Critical Response: Usury and Interest: Correcting Modern Errors

Posted on [July 28, 2020](#)

I spent far too much time writing and not editing this essay, so it is probably poorly edited. If you see any mistakes or typos, please let me know.

It is no secret that the Catholic Church has consistently condemned the practice of usury since its earliest days. The height of this teaching comes in the form of the encyclical, *Vix Pervenit*, of Pope Benedict XIV. In it he reaffirms the traditional doctrine with great clarity while reminding Catholics that usury remains present even in growingly complex commercial transactions of the 18th century.

Today, this doctrine is poorly understood even among Catholics. Few Catholics believe that usury is even present or at least a matter of loan sharking or payday loans. This has been compounded by the Magisterium's doctrinal silence on the topic of usury and the growing prevalence of usury apologists, even among the clergy.^[1] In spite of this, recent days have seen some authors attempting to rearticulate the perennial doctrine on usury. These authors attempt to give teeth to the doctrine that has been practically defanged by ignorance and practical acceptance.

One such example is the recent policy paper posted by the Leonine Institute named "Usury and Interest: Correcting Modern Errors."^[2] They propose to offer the historical teaching on usury and offer a course of action to help end usury and realize a more just economy and society. With such a noble goal, it is unfortunate the serious errors presented in the paper. This arises from a mistaken reading of *Vix Pervenit*, a failure to understand the *mutuum* contract, and apparent lack of knowledge of the history of the question. In the course of this essay I will show where the paper is implausible, deficient or simply mistaken.

Vix Pervenit

Aristotle is noted for saying that "a small error in the beginning lead to a great one in the end." Defining usury follows this exactly. Various authors have taken to define usury in different senses. Usury is taking advantage of the poor in loans, charging excessive rates of interest, or more conservatively charging any interest on loans. The last of these mistaken positions is what is accepted by the Institute's policy paper.

It adopts this definition by considering *Vix Pervenit*.^[3] In that document, Pope Benedict XIV clearly teaches that the "source and origin" of the kind of sin called usury is found in the contract of *mutuum*. This contract of its nature demands a return of equality and thus excess on this type of loan is usury. While the term "mutuum" is frequently translated into English simply as loan, Benedict clearly links the species of usury to the contract of *mutuum*.

The paper however proposes that the encyclical takes usury to be not only arising from the *mutuum* but in other contracts as well.^[4] In the first place, it claims that those who consider usury to be only in the *mutuum* base this "entirely and exclusively on the word choice" of Benedict. It further claims that *mutuum* is also used to mean loans generally. Finally, they quote a later section of *Vix Pervenit* where Benedict appears to say non-*mutuum* contracts are also usurious.

To the first claims, there are two problems. First to complain about the word choice of a Magisterial document is an extremely dangerous position to take. This is especially true when a document is teaching very specifically on a particular sin and relates this very clear to a particular type of behavior. This type of argument taken to its logical end would put the Magisterium up for grabs.

The second problem is that the understanding of *Vix Pervenit* is not “entirely and exclusively” a result of its word choice. The document is written by a Scholastic living within a tradition going back several hundred years. This tradition of canonists and theologians consistently taught that usury was only in the *mutuum*.^[5] Benedict’s wording clearly reiterates this same tradition and confirms it with Magisterial authority.

Next the authors claim that *mutuum* is also sometimes used to refer to loans more generally. This may be true, but they fail to demonstrate that this is what Benedict is doing. Moreover, Benedict is a Scholastic writing in the tradition mentioned above. For him to use the language of that tradition without clearly stating he is speaking generally would lead to foreseeable confusion. If this were the case, Benedict would be gravely negligent in his teaching. Thus, given the context of the encyclical a general meaning of *mutuum* is simply implausible.

Finally, the paper reads a later section of *Vix Pervenit* in such a way that it would include non-*mutuum* contracts under the head of usury. The one they provide comes from the Papal Encyclicals website. Reading the Latin this is a somewhat deficient translation, so I provide the same passage from Denzinger’s *Enchiridion Symbolorum*: But this must be diligently borne in mind, that one would falsely and certainly rashly persuade himself that there is always found and is everywhere present, either some legitimate titles together with a loan, or, even excluding a loan, other just contracts, by the aid of which titles or contracts, it is permitted, as often as money, grain, or something of that kind is lent to another, just so often to receive a moderate increase beyond the whole and sound principal. And so, if anyone thinks in this manner, he will without any doubt be in opposition not only to the divine Scriptures and to the judgment of the Catholic Church about usury, but even to human common sense itself, and to natural reason. For, this at least cannot escape anyone, that in many cases a man is bound to succor another with a pure and simple act of lending, especially when Christ the Lord teaches: “From him that would borrow of thee, turn not away” [Matt. 5:42]; and that, similarly, in many circumstances, besides the loan itself, there can be place for no other just and true contract. Whoever, therefore, is willing to consult his conscience, ought first to inquire whether, with a loan there is truly any other just title, or, apart from a loan there is a just contract, by reason of which the profit which he seeks may be returned immune and free of all guilt.^[6]

From this they take Benedict to be expanding the sense of usury to include other unnamed contracts which receive “moderate increase.” There are a few problems with this sort of interpretation.

In the first place it makes the encyclical itself internally incoherent. In section 3.I, Benedict clearly teaching that usury finds its source and origin in the *mutuum* contract. As noted this was consistently with the canonist and theological tradition that usury is found solely in the contract of *mutuum*. To interpret section 3.V as the paper does is to repudiate the teaching just given a few paragraphs before. The source and origin of usury is not in fact the *mutuum*, rather it finds a source and origin in other sorts of contracts as well. Thus, on the paper’s interpretation *Vix Pervenit* contradicts itself.

In the second place, the authors following and contemporaneous with *Vix Pervenit* did not interpret this passage in this way. The most notable example would be the Doctor of the Church, St. Alphonsus Liguori. He lived at the time that *Vix Pervenit* was promulgated and even cites it in his work, *Moral Theology*. In spite of this passage, right after defining and discussing the strict nature of the *mutuum* he teaches that usury is “profit arising immediately from a *mutuum*.”^[7] Authors could be multiplied

almost endlessly, but when a Doctor of the Church living contemporaneously with the document interprets it differently than this paper, we are reasonably inclined to take the saint's understanding as superior.

Though these considerations are sufficient to demonstrate that the paper's position is implausible, I would like to propose another meaning to help the reader. Benedict is admonishing people who believe that there are "always" and "everywhere" investments free from usury. Reading many of the saint throughout the 16th to 18th centuries it usury was clearly prevalent almost everywhere. So, from this it seems that Benedict is admonishing those who would like to think that usury is no longer a concern, just as we see today.

Additionally, while I will delay his reference to "titles" to later in our discussion, he does mention other contracts. Historically, this can be understood as to the various contracts that were employed to hide usury. Since the paper does not discuss these I will only name them here. There was "dry" or fictitious exchange,^[8] the triple contract^[9] and the personal *census*,^[10] which were each condemned by various papal acts as usurious. The way that the Scholastics of the time examined these was to see if a *mutuum* contract was virtually or implicitly present.^[11] So, while these contracts were not *mutua* in name, they nevertheless included *mutuum* contracts which made the profits usurious. Many of these were popular among the laity and promoted by theologians against the teaching of the popes.^[12] These would be such contract that appear otherwise just in name, but were frequently used to hide usury and it appears that Benedict was admonishing people to take care in this respect. In a later section of the paper, it discusses another passage of *Vix Pervenit*.^[13] The paper apparently takes issue with this section being used by the now deceased blogger, Zippy Catholic, to excuse charging interest in some cases. He argues that interest can be charged on non-*mutuum* contracts, or at least that this is not usury.

The passage from *Vix Pervenit*, again from Denzinger, reads as follows:

But by this it is not at all denied that sometimes there can perhaps occur certain other titles, as they say, together with the contract of lending, and these not at all innate or intrinsic in general to the nature of a loan, from which titles there arises a just and entirely legitimate cause of rightly demanding something more above the principal than is due from the loan. Likewise, it is not denied that many times one's own money can be rightly invested and expended in other contracts of a different nature from the nature of lending, either to secure an annual income for oneself, or also to practice legitimate commerce and business, and thus procure an honest profit.^[14]

This section is somewhat muddled from an apparent ignorance of the history and tradition to which *Vix Pervenit* addresses itself. The above passage speaks of titles not at all intrinsic to the contract, that is extrinsic. This is clearly a reference to the well established theory of the time called "extrinsic titles." This theory sought to show that there are some titles extrinsic to the contract itself that could provide a reason to charge something over the principal. This theory took a strong point of departure from St. Thomas Aquinas' apparent admission of this when he states: "A lender may without sin enter an agreement with the borrower for compensation for the loss he incurs of something he ought to have, for this is not to sell the use of money but to avoid a loss."^[15] So, Aquinas admits that there is an extrinsic loss that the lender may claim and enter into a separate contract for the borrower to pay in excess of the principal of the *mutuum*. Example of this are the cost of writing up the contract or procuring the goods to be loaned. Common lists of extrinsic titles include *poena conventalis*, *damnum emergens*, *lucrum cessans* and *periculum sortis*.

In what follows the paper generally accepts the research and authority of Brian McCall.^[16] He discusses the titles mentioned except *periculum sortis*. Let us begin by considering *poena conventalis*.

This title was a sort of fee that was charge as a result of late payment. It was agreed to at the time of effecting the loan. Historically it was broadly accepted^[17] and Aquinas admitted that some payment over the principal was licit in this case.^[18] Additionally, Aquinas remarks in the Summa that a lender can charge more on the basis of the virtual profits that he was prevented from obtaining because of the late payment.^[19] Since this title was so broadly accepted, it was also frequently used as a way of hiding usury. The usurer and borrower would agree to a *mutuum* with this potential fee with the tacit agreement that the borrower would intentionally pay late so that the usurer could hide his wicked usuries.

The paper largely passes over the title of *damnum emergens*. Here the authors appear to equate this title with damages from a late charge. This title was traditionally understood as losses that the lender suffered at the beginning of the loan rather than the end. For example, the lender may need to suffer an expense to get the money to the borrower or the expense of writing and notarizing the *mutuum*. This is distinct from a late charge. It is not clear that the authors would accept this because it is not the result of “the borrower fail[ing] to hold up his end of the agreement” as they do with *poena conventalis*.

Not surprisingly this title too grew and expanded beyond reason to include obviously usurious charges. Fr. Dempsey recalls and defends the notion that *damnum emergens* includes any disadvantage that the lender may suffer from the lack of his money.^[20] This includes such obviously unjust situations as making the borrower liable for repairs the lender is unable to make because he loan the money. Aquinas rejects this in the *De Malo* arguing that the lender’s “stupidity” in failing to protect himself should not be the borrower’s responsibility.^[21] This also obviously extends *damnum emergens* beyond actual damages suffered as a direct result of the *mutuum* to any losses or disadvantages even incidentally related to the contracting of the *mutuum*.

Next we turn our attention to the claim of *lucrum cessans*. In the present section, the paper follows McCall in attributing this to actual damages incurred by the lender. However, in an earlier passage the paper rejected *lucrum cessans* outright since it “only exists because of the loan contract in question, it is intrinsic to the said contract.” This betrays both a deficient understanding of extrinsic titles and an apparent internal contradiction in the paper. *Lucrum cessans* is a title with a long and hotly debated history. It cannot be so lightly accepted or rejected.

As the paper notes *lucrum cessans* is a claim to the profitable investment that could have been made.^[22] A merchant has a claim to the profits of his business because of the money he has invested into it. If a man should approach him for a *mutuum*, then he must take out money from his business to grant it to the man. The claim to *lucrum cessans* is that the merchant has a title to these unrealized profits and so he can claim something over the principal in compensation for this loss that he suffers.

Over the centuries this title was debated. It was generally rejected by the early Scholastics, but gained near universal approval in the 16th and 17th centuries among theologians and laity. However, a significant problem was that the Angelic Doctor explicitly rejects the logic of the title.^[23] A great deal of work was done to justify this title against Aquinas and ultimately it was generally accept that Aquinas either approved of it or offered an argument conditioned on 13th century economics.

The issue with this title is that it does not constitute actual losses. In the case of *damnum emergens* the lender suffers real losses from paying expenses related to

the *mutuum*. *Lucrum cessans* claims a title to losses that the merchant never suffers, because he never has the profits, because they never exist. *Lucrum cessans* is a forerunner of opportunity cost, which the paper does reject.^[24]

In the end *lucrum cessans* is neither intrinsic to the contract nor actual damages. The paper simply follows McCall who simply asserts along with the late Scholastics that *lucrum cessans* constitutes real damages. The late Scholastic tradition did attempt to explain *lucrum cessans* as real damages similar to *damnum emergens*. However, a consideration of what *lucrum cessans* claims shows that this is not the case.

Finally, there is the title of *periculum sortis*. This was the claim that the lender has some claim over the principal because of the risk of default. Various arguments were put forward in favor of this title, but since the paper does not address it, I will simply assert that this title fails. However, in this respect the paper is somewhat deficient. This is because risk adjustments from default probabilities are used in modern finance to explain certain level of interest on bonds, for example.

These are the titles that *Vix Pervenit* would historically be referring. It is important to note that *Vix Pervenit* does not approve of any extrinsic title specifically.^[25] Moreover, the languages of the encyclical state that Benedict is *not denying* such titles exist. That is, he is not saying that they does not exist at all, but neither is he positively saying that any such titles exist.

Returning to the paper's original citation, the paper notes that this discusses titles as well as other contracts. The paper continues to follow McCall and considers four different contracts^[26] that were treated by the Scholastics. However, before proceeding to other contracts, we must address what *Vix Pervenit* explicitly teaching: the source and origin of usury, namely the *mutuum*. As it states the very *nature* of this contract demands equality wherefrom usury arises. Therefore, in order to understand usury we should consider the nature of the *mutuum*. The papers does treat this so let us consider its treatment.

Mutuum – Source and Origin of Usury

The section of the paper discussing the *mutuum* is curious.^[27] As we've seen the paper apparently rejects the clear teaching of Benedict XIV, favoring rather an interpretation that expands usury to other contracts beside the *mutuum*. In spite of this, the paper attempts to treat the nature of the *mutuum* contract as ultimately very relevant to the question of usurious contracts.

The paper takes the transfer of ownership to be central to the problem of usury and the nature of the *mutuum*. It agreeably quotes Rupert Ederer remarking that in a *mutuum* "something which of its nature must change ownership when it is loaned, because it is used up by the borrower (money, food)." Ederer compares this to a tool or horse which can be rented and the same thing can be returned because it is not consumed. The result of this consumption is that ownership must wholly pass to the borrower, whereas when the thing is not consumed it does not so pass. Usury then is charging for the thing you just granted ownership to the borrower. Thus we see that in the problem of usury transfer of ownership is key.

The justification for this transfer is common, problematic and contrary to the mind of Aquinas. Ederer refers to a loan of something that of its *nature* is used up and therefore must change ownership. This treats the problem as related to the nature of the property given rather than the nature of the contract. The problem with this is that, as Aquinas notes, a thing has more than one use.^[28] One of these uses may consume the thing whereas other uses may not consume it. For example, you could use wood boards to carry things or you could use it to burn. The wood is indifferent to these uses and it is rather the contract that determines what use is normative and

authorized. Aquinas himself gives the example of a pair of shoes that can be sold and can enter into a *mutuum* even though their primary use is for wearing.^[29] With Aquinas' insight in mind let us consider the nature of the *mutuum*. A *mutuum* is a contract that grants property for a return in kind at a later date. The lender in the agreement only has a claim to the thing in kind. This differs from a lease where the lender maintains his claim against the specific property you must return while granting you the use of it. However, for the lender in a *mutuum* the thing in kind is a mere abstraction and does not exist within the context of the contract. Consequently, the lender's only claim is to the promise of the borrower to make a return of a particular thing the same in kind at the end of the contract term. This means that a *mutuum* is a personally secured loan, because the borrower promises to make a return whatever happens to the property^[30] and there is no other property designated in the contract.

Since the paper doesn't recognize this, it relies exclusively on the transfer of ownership. However, the transfer of ownership is an insufficient condition to resolve the contract as a *mutuum*. For example, a sale or gift both transfer ownership^[31] but are clearly not *mutuum* contracts. In fact historically, some authors adopted the view that the *mutuum* was actually a sale for the reason of the transfer of ownership. On this basis they excuse usury along the lines of the imprecision of just price and the difference of value of the loaned good at different times.^[32] The paper obviously does not take this position, but it does demonstrate the danger of insufficient consideration of the nature of the *mutuum*.

Having considered the nature of the *mutuum* and the paper's deficiency in this respect, we turn to the consideration of other contracts.^[33] Here they follow McCall's research on this point, who proposes that by sharing in the risk of the business the "lender" is justified in taking something over what is given. The paper proposes this is the result of the equity claims involved in some of the contracts.

Let's move to the second contract called in the paper an "annuity."^[34] The paper's discussion focuses principally upon the modern insurance contract, but what they are referring to (given McCall's paper) is the medieval *census* contract, sometimes translated as "annuity" or "mortgage." I will first discuss what the actual *census* is and how it doesn't involve an equity stake and then the modern annuity contract.

The medieval *census* was a complex arrangement. According to William Ashley's account of history, it involved a sort of leaseback agreement.^[35] The property owner would sell the property to the *census* purchaser. He would receive some money and ownership of the property back, but encumbered by the purchaser's claim over it. Often these were made against farms and the purchaser would have a claim to the actual produce of the field and receive regular payments.

This contract was problematic for the usury doctrine, because it has some similarity to the *mutuum*. The issue was determining how the stream of payments was justified. Some claimed that the purchaser obtained a claim to future payments, but obviously this in itself would be devastating to the usury doctrine.^[36] A usurer could simply claim that in contracting a *mutuum* he was obtaining a claim to future payments from the borrower.

The late Scholastic Juan de Lugo provided a sophisticated understanding of the contract that protected the usury doctrine.^[37] The purchaser gained a partial usufruct against the property, that is he did not become the owner or obtain an equity stake. The purchaser in the contract rented back that usufruct to the *census* seller. He would then stipulate that the payments be made in cash equivalents rather than the literal fruits of the land. This is consistent with the history that Ashley presents and

continues to distinguish it from the *mutuum* where the lender receives only the promise from the borrower for return.

This contract also received general Magisterial approval. Pope Callistus III in *Regminis Universalis*[\[38\]](#) approves of the contract as long as the lender cannot pursue the borrower if the principal can't be recovered from the property. Pope Pius V in *Cum Onus* insisted on a fruitful base consistent with de Lugo's theory .

This sort of contract is distinct from a modern annuity contract sold by a finance company. Annuity contracts can be very complex agreements. These contracts involve depositing money into an account where the value is then allocated to different subaccounts invested in different assets. The growth of the account value may be guaranteed with a minimum and the stream of payments may be guaranteed for a definite period or for life. There are additional "riders" that can be added that multiply the complexities of these agreements.

To gain an understanding of this contract let's consider a much simpler cases, the *depositum* and savings account. The distinction between these can be said to be the difference between having money in the bank and money at the bank.

A *depositum* is considered to be a bare bailment. A bailment is when you pass possession of some property to another party for some purpose while retaining ownership. So, when you leave your suit at the dry cleaner, they take possession of it and are responsible for it while they clean it. A *depositum* is a simple bailment where the holder is just holding the property. This is the case of a safety deposit box at the bank. The bank takes possession of whatever you are depositing, but you retain the ownership of those specific things. Your money is there at the bank.

In contrast, a savings account is not the same sort of contract. Many people think that when they have a savings account they have some dollars at the bank, but this is not the case. When you deposit money into your account, the bank takes that money and it becomes a liability on their balance sheet. They go and spend those dollars as part of their operations, but you have a claim against their assets. This claim is in the form of your savings account agreement, which includes among other things the right to on demand withdrawals. Thus, when you deposit money in a bank you are really investing in the bank, but again you are obviously not an owner of the bank.

This is seen particularly in the case of a "run on the bank." Such a situation is typically when a bank's credit rating has been downgraded or there is some event that makes people want physical cash. The result is that the bank must provide dollars for these withdrawals. Since the bank doesn't actually maintain all of those deposits in cash and there are no dollars that you specifically own, it happens that you may go to the bank and there isn't any cash for you to withdrawal. Ignoring FDIC, if the bank fails, a similar thing may happen that you just lose your account value in the bank, because there aren't enough assets to cover the claims against the bank.

This is similar in the case of a modern annuity. Certainly you have greater rights than a savings account, but there is no pile of money that you own or have a claim to. When you deposit money into your account, that becomes a liability against the company that they back with their assets. That money may be invested in assets to help guarantee the return they promise you. However, it is possible that if the company fails that you would not get back all of your account value.

The next contract considers a form of government bonds called *montes*. The paper fails to mention one of the significant components of the Scholastic acceptance of these, namely that they were involuntary.^[39] The leaders of Italian city states would take people's property, often to help fund frequent inter-city wars, and grant citizens a promise to pay it back with some excess. This doesn't seem to include an equity stake and it's not clear that the authority of the state to tax really justifies these bonds. In any case, the involuntary nature of these bonds makes them sufficiently different morally that it is not straightforward to compare them to modern government bonds.

In speaking with Dr. Levi Russell, the paper has confused this *montes* with the *Montes Pietatis*.^[40] The *montes* mentioned by McCall were forced government loans. McCall notes that these funds were "conscripted" from citizens and the state would pay annual "gratuity" to citizens. These are obviously not loans that government contracts out to its citizens, but rather involuntary bonds that the government forced upon its citizens. The *Montes Pietatis* were charitable pawn shops that were sometimes run by Franciscans. They were largely financed by the donations of wealthy patrons and charged a relatively small fee on the loans.^[41] These two *montes* are manifestly different and McCall is referring to the first. Thus he isn't saying that the Scholastics argued that the state could charge interest on the loans it makes to its citizens.

Finally we come to credit sales. This type of contract is when I grant you something, say a roll of silk, to be paid in money at some future date. These are clearly *mutuum* agreements that stipulate that the return in kind be made in cash equivalents. This is treated by Aquinas in his letter *De Emptione*.^[42] He considers some cases where such a transaction is just or usurious. While Aquinas does not treat the specific case, McCall notes that the Scholastics acknowledged that a higher price may be charged if the future price is doubtful.

The question arose in part because of a letter from Pope Alexander III to the archbishop of Geneva that made its way into the Decretals.^[43] In the letter, he treats the question of charging more on credit sales. He states that the contract would be sinful unless the future price is doubtful. The question then is how to square this with the usury doctrine.

McCall notes that this can be understood as licit under a just price notion. Let me offer one way of thinking about these transactions. If I grant you a roll of silk, then after the term of the *mutuum* you owe me a roll of silk back. Now the price of a roll of silk may vary between the time I give it to you and the time of return. In the end though you still owe me a roll of silk. Now the cash equivalent of a roll of silk may be higher or lower at the time of the return and be subject to just price. Thus, in returning exactly one roll of silk in cash equivalent you may owe me more or less in cash.

It is worth noting that this kind of logic repudiates inflation as an excuse for usury. In the case discussed, the price of silk goes up or inflates. This means that a roll of silk is more valuable in terms of dollars today than it was when it was granted in the *mutuum*. However, what is owed back is a roll of silk and not the value or purchasing power. If inflation were a just component of this analysis, then when the price of silk increases the borrower would owe less than a roll of silk back.

As McCall notes transactions like this involving considerations of just price were frequently a source of hidden usury. If I loan you in a *mutuum* 10 apples, but stipulate a return in oranges, then there arises the problem of equivalence between apples and oranges. The uncertainty around just price opens the way for hidden usury. This is likely why Alexander III counsels citizens to be wary because this cannot be hidden from God.

Having looked at the four contracts mentioned in the paper, let us turn to a later section that attempts to make a distinction between modern corporate debt and

equity.^[44] Here the paper addresses that the profits received by an investor are justified because he shares in the risk of the business. This share in the risk is indicative that ownership has not completely passed and that he has an equity stake against the business. If the business produces no profits, then the investor receives nothing. This is meant to distinguish a corporate bond where coupons must be paid before profits to investors are considered and the bondholder is first in line in the case of liquidation of the business. Hence, it seems that the bondholder's coupon payments are not justified because he doesn't share in the risk of the business.

However, the proposed distinction is tenuous at best. If we accept that the premise that a share in the risk of the business justifies payments, then bondholder does share and the payments are justified. If the business fails, the bondholder may not receive his coupon payments. Also, even though bondholders are first in line for liquidation, this does not mean they will receive any of their principal back if there are insufficient assets. This is even worse in the case of junior or subordinate bonds who are later in line to receive repayment from liquidations. McCall admits something like this in the case of *census* where that contract shares in the risk of the "sterility of the base."

Another consideration is the reality of preferred stock. This type of stock is clearly an equity claim against the company, but has characteristics similar to bonds. Preferred stock has claims to regular dividend payments from the profits of the business and if these are not paid in a particular period, preferred stock is first in line to receive payment before common stockholders. Moreover, they also possess seniority of liquidation rights over common stock. These securities share in less of the risk of the business than common stock, but more than bonds. Ultimately, each of these securities shares in varying degrees in the risk of the business as a result of their vary property claims against the business. Thus the distinction between stock and bonds is one of degree rather than in kind.

This differs from the case of a *mutuum*. In that case, the lender holds none of the risk associated with the property, because he has no claim against it. His only claim is to the personal promise of the borrower, who cannot be property. In the bond or *census*, the purchaser receives a claim against the fruitful base, whether a Fortune 500 or a farm. From this claim he can draw a profit as explained by de Lugo in the case of the *census*. This distinction is one in kind rather than merely degree. Ultimately corporate bonds are no *mutua* and thus not usurious, because the bondholder has a claim against real property and not the personal promise of the borrower.

Conclusion and Policy Proposal

More could be said about the paper, including additional clarifications and corrections. However, this essay has gone on too long as it is, as I approach the word count of the paper itself. Suffice it to say that the paper fails at the beginning trying to expand Pope Benedict XIV's clear and explicit teaching on the source and origin of usury. In trying to understand the *mutuum* the paper fails to treat properly the nature of the contract. These together lead to an excessive position of rejecting all "lending."

Here I will propose another potential policy. The state could simply refuse to enforce deficiency judgements. This would not eliminate or illegalize all usury. However, it is very simple to implement and requires no special knowledge or judgement with respect to contracts. If the claimant demands that the state forces the borrower to pay in excess of the property specifically designated by the contract, the state could simply refuse. While the contract terms may be in themselves usurious, this has the advantage of refusing to enforce it as a *mutuum* contract. It also strongly incentives lenders to properly collateralize their lending with specific property.

Appendix

I spent some time communicating with Anthony Fernandez on Twitter. I promised that I would treat the payment of interest on mortgage contracts if it were relevant. Anthony insists that the bank charges the borrower for what belongs to him, namely the house. This I think is too financially naïve, so let us treat the problem.

In a licit mortgage on a new home, the bank and the borrower come together to purchase some property. This has a character of a *societas* or partnership, because the parties are coming together to a particular end. The bank furnishes the fund to purchase the property but passes the title to the borrower. The borrower however does not hold full ownership rights over the property. The bank retains a property interest in the house, which collateralizes the money spent on purchasing it. In the case of default, the bank has rights to foreclose the house and sell it to cover the remaining principal. The borrower on the other hand has exclusive use of the property. Since the bank holds a claim to use the property as collateral, the bank rents back that claim to use to the borrower who is actually using for his home. This is similar to the case of the *census* where the purchaser has a partial claim to the use that he rents back to the seller.

In the case of a mortgage on a house already owned, this appears clearly to be an example of a *census* contract, where the owner sells a *usufruct* claim to the bank while continuing to use the property. This appears to be what Callistus III talks about when he approve of people who “encumber their goods, their houses, their fields, their farms, their possessions, and inheritances, selling the revenues or annual rents...”

Another example of this would be the case of subleases. Suppose that a man has built a strip mall with five units. He is struggling to find tenants at \$500 per month for a unit. I come to him and agree to rent the whole strip mall on the condition that I can sublease it to others. For this, he grants me a discount and charges me rent of \$2000 per month. I in turn sublease the units to five tenants at \$450 per month for a total of \$2250 per month, making a small monthly profit for myself.

What allows this is that I am paying the owner for a usufruct against the building. That is I'm paying for certain property claims and specifically that I can make use of it without becoming an owner of the property. I then sublease these property claims to other people and charge them for it. The profits that I make are not a result of an equity stake that I have in the building, but because of a property claim I have against it.

[1] See Fr. Thomas Divine's *Interest: An historical and Analytical Study in Economics and Modern Ethics* where he argues for an intrinsic claim to usury. This effectively denies that usury is intrinsically evil, but rather a matter of circumstances. Fr. Patrick Clearly in *The Church and Usury: An Essay on some Historical and Theological aspects of Money-Lending* suggests that the Council of Vienna's condemnation of those that deny usury is a sin is historically contingent and goes on to excuse usury (pg. 201).

[2] I would like to add a few editorial remarks. The paper is surely the work of multiple hands, but in such a way that the impression is that three essays were appended one to another. This is because the same topics are discussed in multiple

passes giving the paper an overall disorganized structure. Moreover, there are internal contractions that I discuss in my essay. Finally, there are a few very clear typos.

[3] <http://patristica.net/denzinger/>, #1475

[4] Page 6-7

[5] For several citations from the early and late Scholastics as well as research by Raymond De Roover, Fabio Monslave and Fr. Bernard Dempsey

see: <https://lendhopingnothing.wordpress.com/2019/06/07/usury-and-mutuum-early-scholastics/>, <https://lendhopingnothing.wordpress.com/2019/06/07/usury-and-mutuum-late-scholastics/>, <https://lendhopingnothing.wordpress.com/2019/03/01/question-evidence-for-mutuum/>

[6] See <http://patristica.net/denzinger/>, #1479

[7] See <https://archive.org/details/theologiamorali06mansgoog/page/n48>

[8] See John T. Noonan's *Scholastic Analysis of Usury*, 177, 331-335.

[9] Ibid. 202ff.

[10] Ibid. 231ff.

[11] Noonan, *Scholastic Analysis*, 269. "...an implicit title or contract, was found to exist in contract that on their face might have been considered loans [mutua] at usury." Dempsey, *Interest and Usury*, 170, quoting Molina, "Look and see if in that contract a *mutuum* enters, either formally or **virtually**; and if it does, whether a gain is sought from that *mutuum*." (italics in original, bolding mine)

[12] See John T. Noonan's "Usury: The Amendment of Papal Teaching by Theologians" in *Change in Official Catholic Moral Teaching*. He lays out the history and strategy of theologians, especially Jesuits, seeking to undermine or diminish the condemnation of usurious contracts by the popes.

[13] Page 11-12.

[14] See <http://patristica.net/denzinger/>, #1477. Notably the paper does not quote this entirely, but stops before the "Likewise, it is not denied..."

[15] Summa Theologica II-II, q. 78, a. 2, ad. 1.

[16] It is strange that the paper relies on McCall's article in the *Cardozo Law Review*. This is because his book, *The Church and the Usurers*, includes his article almost verbatim but has additional research and corrects some mistakes he makes in the article.

[17] See Noonan, *Scholastic Analysis of Usury*, 109.

[18] De Malo q. 13, a. 4, ad. 14.

[19] ST II-II, q. 62, a. 4, ad. 2. This passage is frequently used to support the title of *lucrum cessans* in spite of the fact that Aquinas clearly rejects the title in ST II-II, q. 78, a. 2, ad. 1.

[20] Benard Dempsey, *Interest and Usury*, 173.

[21] De Malo q. 13, a. 4, ad. 14.

[22] Page 6.

[23] ST II-II, q. 78, a. 2, ad. 1. De Malo q. 13, a. 4, obj. 14.

[24] Page 18.

[25] This is extremely important to note, because authors such as McCall attribute specifically *damnum emergens* and *lucrum cessans* as approved by Benedict's encyclical. The encyclical simply does not support such an interpretation.

[26] At this point it is unclear why the paper deals with only the four contracts selected. McCall deals with more than this and the Scholastics treated even more than those cited by McCall.

[27] Pages 7-9.

[28] ST II-II, q. 78, a. 1, ad. 6.

[29] De Malo q. 13, a. 4, ad. 15.

[30] ST II-II, q. 78, a. 2, ad. 5. "He who lends [mutuat] money transfers the ownership of the money to the borrower. Hence the borrower holds the money at his own risk and **is bound to pay it all back**: wherefore the lender must not exact more." (emphasis mine)

[31] For the purpose of this argument, it is irrelevant whether profit can be drawn in these contracts, but only that the transfer of ownership is insufficient.

[32] See Fr. Cleary's *The Church and Usury* 178ff.

[33] Page 13-15.

[34] I skip over the partnership, because this was an uncontroversial contract that obviously involves an equity stake. In the case of common stock, the transaction is clearly not a *mutuum*, because the purchaser is transferring the ownership of his money for a claim against the company. Its not obvious why this isn't a *mutuum* for the paper since the money transfers ownership, but the claim received by the lender was never considered.

[35] See William Ashley's *An Introduction to English Economic History and Theory: The End of the Middle Ages*, 406. "...the landlord sold his property, including the right to receive the rent, to the third person, in return for a sum of money, and then immediately received it back burdened with the obligation himself to pay in future that particular rent-charge."

[36] Noonan, *Scholastic Analysis*, 155ff

[37] Noonan, *Scholastic Analysis*, 242, quoting de Lugo's *Disputations*: "...part of the usufruct of the field on which the *census* is constituted is bought. Then, ... by another contract, which is implicitly contained in the very constitution of a real *census*, it is agreed by the parties that, for the hope of the fruit which the buyer has from that usufruct, the seller binds himself to pay such an annual payment of money; – and in this way the prior contract is reduced to the obligation of paying only an annual sum, by which the seller redeems the partial usufruct of the field which he had sold; the field itself, however, remaining really obliged in the manner of a pledge for the payment of the promised money..."

[38] <http://patristica.net/denzinger/>, #716.

[39] Noonan, 121-122.

[40] William Ashley, *Introduction to English Economic*, 447-448. "The *mons pietatis* had itself been suggested by an older practice which had occasioned much discussion among canonists and theologians; and that was the system of public debt resorted to by many Italian states. The great republics, Venice, Florence, and Genoa, had found themselves compelled to demand forced loans from their citizens, and to prevent dissatisfaction by paying an annual interest."

[41] See Noonan, 295. "A *mons pietatis* was a public pawnshop, regularly financed by charitable donations and run not for profit but for the service of the poor. It charged a small fee for its care of the pawns and for the expenses of administration, including the salaries of its employees, so that the capital would not eventually be exhausted by the costs of the business."

[42] See <https://www.corpusthomisticum.org/opw.html> for the Latin.

[43] <http://patristica.net/denzinger/> #395.

[44] Page 20-22.

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Nature of the Mutuum – Magisterium

Posted on [July 22, 2020](#)

Usury Solely in the Mutuum

In previous posts ([here](#), [here](#) and [here](#)), I have established the long tradition of considering usury as profit on a *mutuum* and only a *mutuum* contract. However, I have as yet done the work to show in what the *mutuum* consists and this is supported by Magisterial teaching.

Usury and a Personal Guarantee

First, my position is that the *mutuum* is a grant of a good to be returned in kind at a later date. Much of work of understanding the terms of the *mutuum* and usury arises out of the “return in kind.”

Since the lender accepts a return in kind rather than a return in particular, he does not maintain a claim against that particular thing, but to a thing that is the same in kind. However, in the context of the *mutuum*, the thing in kind is an abstraction and does not yet exist, because it is a claim to a kind and not a particular thing. So, the lender’s claim is not against any property, since the in kind property doesn’t exist, but against the borrower himself in his promise to make a return in kind.

Because the return is to be made in kind, the borrower is authorized to “consume” or alienate the thing. He can “consume” or alienate the thing either physically, as with eating food, or morally, as money or other property in exchange. This means that the whole ownership and associated risk of the ownership passes to the borrower. The borrower could not licitly or legally consume the property if the lender had not granted him whole ownership of the thing. As such in the contract of *mutuum*, a *usufruct* or claim to the use of the thing cannot exist, because the borrower has the authority to use it in such a way that he consumes or alienates it.

The result of all of this is that the borrower is personally obligated for the return in kind. He is now the owner of the property and if it is utterly destroyed, he is still contractually obligated to return the thing in kind. This type of contract is a personally secured loan, because the loan is secured not by any property that the lender has a claim to but only the promise of the borrower. To make a charge on this is illicit because it is to treat a person as property when otherwise the lender has no property claim as a basis for a charge.

The key issue here with regard to usury and the *mutuum* is that the borrower is personally obligated to make a return come what may to the property. Moreover, the lender has no real property claim, but only this promise of the borrower.

Aquinas and Francis Xavier

This is also the position of Aquinas. In discussing usury, he notes that in the *mutuum* the whole ownership is transferred and the borrower holds the whole risk of owning it. Moreover, he “is bound to pay it all back” ([ST II-II q. 78, a.2, ad. 5](#)) whether or not the risk of its destruction is realized. So, Aquinas asserts the personal obligation of the borrower.

We also see in [St. Francis Xavier’s guide](#) for confessors an indication of this as well. He writes that confessors should question penitents because of their ignorance of usury. Specifically he says, “what is the system that they follow in barter, in loans, and in the **whole matter of security for contracts**? You will generally find that everything is defiled with usurious contracts...” That is he wants the confessor to question what secures the contract as part of determining whether it is usurious or not.

Magisterial Documents

Now let us turn to Magisterial teaching and first consider the papal bull, [Cum Onus](#), of Pope Saint Pius V. In this bull, the Pope declares that the census contract (translated here “annuity”) must be grounded “in an immoveable thing, or a thing that may be

considered as immoveable, of its own nature fruitful, and that may be nominally designated by certain limits.” That is the contract must designate specific fruitful property that acts as the base for the profitable gains. He further declares other such census contract that don’t meet this to be usurious.

This papal bull was in response to the innovation of the *census personalis*. This contract sought to take the base of the contract in the future labors of the seller or his whole estate considered generally, that is not specifically designated. Under the above understanding of the *mutuum*, this is clearly a usurious *mutuum* under a different name, because the lender has no real claim against any property.

That aside, the main point is that in contrasting a licit *census* with a usurious contract, Pope Pius V determined in “undertaking the burden of [his] Apostolic servitude” that the difference was the presence of a property defined by the contract.

Another Apostolic Constitution on the census we ought to consider is [*Regminis Universalis*](#) by Pope Callistus III. Here the Pope also states that in a just *census* the “guarantee for the payment of the aforesaid revenues and rents” is bound to the property “expressly named in the relevant contract.” However, what is important here is that the census buyer if the underlying base “might by the passage of time be reduced to utter destruction and desolation, would not be empowered to recover even in respect of the price paid.” That is the census seller is not personally obligated to make a return, but the buyer’s claim terminates in the definite property in the contract.

Again we see that the Pope contrasts this licit census from a usurious contract by determining that there must be a definite property base declared by the contract.

Moreover, he emphasizes that the census buyer cannot pursue the seller if liquidation of the property fails to cover the price paid. This is essentially the rejection of deficiency judgement, where a borrower can be personally pursued for the any deficiency in the collateral to cover the remaining principal.

Finally, we consider the papal bull, [*Detestabilis Avaritia*](#), of Sixtus V. He here condemns the triple contract that had become popular in his time. He condemns as usurious:

*...all contracts, pacts and conventions whatever, to be celebrated in future, whereby it will be provided on the part of the persons putting into company **money, animals, or any other things whatever**, that if, even by mere accident, any injury, loss, or damage, follow, the very principal, or capital be always safe and restored in full by the managing partner ; or that he guarantee to pay yearly, or monthly during the existence of the company a certain sum or quantity... Fellowships of this nature, when one man will hereafter contribute **money, animals, or other things or goods**, and another yields his labor or industry, are to be formed or entered into honestly, sincerely and with good faith, as it should be, with fair and just conditions, according to the provisions of the law, and without fraud whatever, palliation, suspicion, or infection of the usurious depravity ; so that **the managing partner be not obligated to pay as gain a certain sum, or quantity, free, as aforesaid, from all risk or danger ; nor to restore the capital, if, by any casualty, it should perish.***

Here the Pope insists that the nature of the property in the contract does not change whether it is usurious or not, because whether it is “money, animals, or any other things whatever” does not change his condemnation of the contract. Moreover, he condemns, as did Pope Callistus, the that the managing partner (the borrower here) restore the whole principal should the underlying property be destroyed. Again the deciding factor here is whether the borrower is personally obligated to return in kind come what may to underlying property.

So the key points that distinguish other contracts from a usurious contract are definite property named in the contract and the absence of a claim to deficiency judgments. For example, a fully collateralized loan differs from a *mutuum* because the collateral is definitely specified and the lender cannot pursue the borrower for any deficiencies should he default.

Posted in [Exposition](#), [Magisterium](#), [St. Thomas Aquinas](#), [Usury](#) | Tagged [Cum Onus](#), [Detestabilis Avaritia](#), [Francis Xavier](#), [Regimini Universalis](#) | [Leave a reply](#)

Critical Response: Canon Law Made Easy

Posted on [July 21, 2020](#)

When someone claims that the Catholic Church teaches X and fails to provide unambiguous Magisterial documents to that effect, it is reasonable to be skeptical of such a claim and one ought to perform their due diligence before advancing his claims. Moreover, after due diligence if one discovers that actual Magisterial documents contradict that claim, one can reasonably reject any purported authority of the author claims on the subject and demonstrate how he is wrong. This is the case with the Canon Law Made Easy blog post, [“What Does The Church Say About Usury?”](#) [*] The author, Cathy Caridi, a canon lawyer, is responding to two questions from David and Thomas. The first notes that the most recent Code of Canon Law makes no reference to usury, whereas the Pio-Benedictine Code of 1917 did. He simply asks what the Church’s position on usury is today. Thomas references some Councils condemning usurer’s and claims that the Fifth Lateran Council permits usury. He asks how the Church defines usury and whether or not it is permitted.

What follows is a tragic misrepresentation of the history and doctrine of usury. Cathy ultimately accepts the modern definition of usury as excessive interest on a loan, more or less passing over the Middle Ages’ “struggles” with determining if interest on a loan was licit or not. One of two Magisterial references for this position is Canon 67 of the Fourth Lateran Council, which I reproduce in entirety here:

*The more the christian religion is restrained from usurious practices, so much the more does the perfidy of the Jews grow in these matters, so that within a short time they are exhausting the resources of Christians. Wishing therefore to see that Christians are not savagely oppressed by Jews in this matter, **we ordain by this synodal decree that if Jews in future, on any pretext, extort oppressive and excessive interest from Christians, then they are to be removed from contact with Christians until they have made adequate satisfaction for the immoderate burden.** Christians too, if need be, shall be compelled by ecclesiastical censure, without the possibility of an appeal, to abstain from commerce with them. We enjoin upon princes not to be hostile to Christians on this account, but rather to be zealous in restraining Jews from so great oppression. We decree, under the same penalty, that Jews shall be compelled to make satisfaction to churches for tithes and offerings due to the churches, which the churches were accustomed to receive from Christians for houses and other possessions, before they passed by whatever title to the Jews, so that the churches may thus be preserved from loss. ([papalencyclicals.net](#), emphasis mine)*

The careful reader will note here that the canon does not say that usury is excessive or immoderate but rather Jews who *charge* excessive or immoderate usury should be punished and retribution sought.

The second document is Benedict XVI’s *Caritas in Veritate*. This passage hardly needs consideration because usury is mentioned only in passing, but Cathy insists Benedict

here opposes disproportionate interest rates, i.e. her take on the meaning of usury. Here is the whole passage referenced:

65. Finance, therefore — through the renewed structures and operating methods that have to be designed after its misuse, which wreaked such havoc on the real economy — now needs to go back to being an instrument directed towards improved wealth creation and development. Insofar as they are instruments, the entire economy and finance, not just certain sectors, must be used in an ethical way so as to create suitable conditions for human development and for the development of peoples. It is certainly useful, and in some circumstances imperative, to launch financial initiatives in which the humanitarian dimension predominates. However, this must not obscure the fact that the entire financial system has to be aimed at sustaining true development. Above all, the intention to do good must not be considered incompatible with the effective capacity to produce goods. Financiers must rediscover the genuinely ethical foundation of their activity, so as not to abuse the sophisticated instruments which can serve to betray the interests of savers. Right intention, transparency, and the search for positive results are mutually compatible and must never be detached from one another. If love is wise, it can find ways of working in accordance with provident and just expediency, as is illustrated in a significant way by much of the experience of credit unions.

Both the regulation of the financial sector, so as to safeguard weaker parties and discourage scandalous speculation, and experimentation with new forms of finance, designed to support development projects, are positive experiences that should be further explored and encouraged, highlighting the responsibility of the investor. Furthermore, the experience of micro-finance, which has its roots in the thinking and activity of the civil humanists — I am thinking especially of the birth of pawnbroking — should be strengthened and fine-tuned. **This is all the more necessary in these days when financial difficulties can become severe for many of the more vulnerable sectors of the population, who should be protected from the risk of usury and from despair. The weakest members of society should be helped to defend themselves against usury, just as poor peoples should be helped to derive real benefit from micro-credit, in order to discourage the exploitation that is possible in these two areas.** Since rich countries are also experiencing new forms of poverty, micro-finance can give practical assistance by launching new initiatives and opening up new sectors for the benefit of the weaker elements in society, even at a time of general economic downturn. (Vatican.va, bold mine, italics in original)

Here again Benedict says nothing about the nature of usury. He says little more than that the poor and vulnerable ought to be protected from usury and adds a nod to pawnbroking as one potential solution. He doesn't even mention "disproportionate interest rates" let alone proposing that as the definition of usury.

Finally, with respect to Magisterial teaching, Cathy accepts Thomas' assessment that the Fifth Lateran Council, among other unnamed documents, contradicted other Magisterial teaching on usury. This is mentioned in passing, but is obvious a massive concession against the integrity of the Catholic Magisterium. Therefore, let us examine the referenced text and demonstrate that Cathy's admission of contradictions is too hasty.

Thomas remarks the Second Council of Lyons and First Lateran Council condemned usurers. I'll take this for granted, because it is uncontroversial. However, he goes on to claim that the Fifth Lateran Council said usurers "ought not to be condemned in any

way.” I am familiar with this claim and it usually comes from people proposing a rupture in doctrine, but it refers to the Council’s approval of the *Montes Pietatis*. Let’s see what the Council actually says:

*We wish to make suitable arrangements on this question [whether the Montes Pietatis are usurious or not] (in accord with what we have received from on high). We commend the zeal for justice displayed by the former group, which desires to prevent the opening up of the chasm of usury, as well as the love of piety and truth shown by the latter group, which wishes to aid the poor, and indeed the earnestness of both sides. Since, therefore, this whole question appears to concern the peace and tranquility of the whole christian state, we declare and define, with the approval of the sacred council, that the above-mentioned credit organisations, established by states and hitherto approved and confirmed by the authority of the apostolic see, **do not introduce any kind of evil or provide any incentive to sin if they receive, in addition to the capital, a moderate sum for their expenses and by way of compensation, provided it is intended exclusively to defray the expenses of those employed and of other things pertaining (as mentioned) to the upkeep of the organisations, and provided that no profit is made therefrom.** They ought not, indeed, to be condemned in any way. Rather, such a type of lending is meritorious and should be praised and approved. **It certainly should not be considered as usurious;** it is lawful to preach the piety and mercy of such organisations to the people, including the indulgences granted for this purpose by the holy apostolic see; and in the future, with the approval of the apostolic see, other similar credit organisations can be established. It would, however, be much more perfect and more holy if such credit organisations were completely gratuitous: that is, if those establishing them provided definite sums with which would be paid, if not the total expenses, then at least half the wages of those employed by the organisations, with the result that the debt of the poor would be lightened thereby. We therefore decree that Christ’s faithful ought to be prompted, by a grant of substantial indulgences, to give aid to the poor by providing the sums of which we have spoken, in order to meet the costs of the organisations. (papalencyclicals.net, emphasis mine)*

The Council declares that the pawn shops called the *Montes Pietatis* are in no way usurious. They are permitted to take something moderate to cover the costs of running the work, most performed by mendicants at the time, and with the provision that it be not for profit. As we shall see briefly because these were pawnshops, granting collateralized loans, they were not making contracts that *could* be usurious. Moreover, they were run without profit. As Brian McCall notes in “The Church and the Usurers” the *mons* would grant any excess from the sale of the collateral in covering the loan in the case of default back to the borrower. So the Fifth Lateran Council does not contradict the Catholic teaching.

Now speaking about what the Church teaches on usury and failing to discuss *Vix Pervenit* is much the same as not mentioning *Humanae Vitae* with respect to artificial contraception. This is, however, what Cathy does. The core of *Vix Pervenit* follows:

I. The nature of the sin called usury has its proper place and origin in a loan contract [contractu mutui]. This financial contract between consenting parties demands, by its very nature, that one return to another only as much as he has received. The sin rests on the fact that sometimes the creditor desires more than he has given. Therefore he contends some gain is owed him beyond that which he loaned, but any gain which exceeds the amount he gave is illicit and usurious.

II. One cannot condone the sin of usury by arguing that the gain is not great or excessive, but rather moderate or small; neither can it be condoned by arguing that the borrower is rich; nor even by arguing that the money borrowed is not left idle, but is spent usefully, either to increase one’s fortune, to purchase new estates, or to engage in

*business transactions. **The law governing loans [mutui] consists necessarily in the equality of what is given and returned; once the equality has been established, whoever demands more than that violates the terms of the loan [mutui].** Therefore if one receives interest, he must make restitution according to the commutative bond of justice; its function in human contracts is to assure equality for each one. This law is to be observed in a holy manner. If not observed exactly, reparation must be made.*

(papalencyclical.net, emphasis mine)

Benedict XIV clearly teaches that usury arises in a mutuum contract, a particular type of loan the name of which comes from Roman Law. By the very nature of this contract equality of what is given and returned is demanded. Moreover, the notion that usury is excused because it is moderate or small is explicitly condemned. So, usury as excessive or moderate interest has been unambiguously rejected by the Magisterium for nearly 300 years.

This teaching is not novel to Benedict. The Scholastic and canonist traditions taught this same doctrine since at least the 11th century. Moreover, there is some evidence that St. Ambrose also taught this going back to the 4th century and while permitted by Roman Law, the Romans were aware that charging excess on a mutuum was contrary to natural law.

The final point we should attend to is that canon from the 1917 Code regarding usury. Cathy does not quote it in its entirety here, so let's consider it wholly:

Canon 1543. If a fungible thing is given to someone in such a way that it becomes his and later is to be returned only in the same kind, no gain can be received by reason of the contract itself; but in the payment of a fungible thing, it is not in itself illicit to contract for the gain allowed by law, unless it is clear that this is excessive, or even for a greater gain, if a just and adequate title be present. ([translation here](#))

Can 1543. Si res fungibilis ita alicui detur ut eius fiat et postea tantundem in eodem genere restituatur, nihil lucri, ratione ipsius contractus, percipi potest; sed in praestatione rei fungibilis non est per se illicitum de lucro legali pacisci, nisi constet ipsum esse immoderatum, aut etiam de lucro maiore, si iustus ac proportionatus titulus suffragetur. ([Monsignor Jason Gary](#))

There are a number of things to note about this text. First, as Canon Law it is a juridical rather than a doctrinal statement. As I understand it, it is not an act of the Magisterium establishing doctrine, but rather an act of ecclesiastical law.

Next, there are some things concerning terminology. "Usury" and "mutuum" (or even some version of "loan") never appear in the canon, but the word "fungible" or "res fungibilis," which to my knowledge doesn't appear in any Magisterial text, does appear. The text is very suggestive, but in itself does tell us that this is about usury. However, given that the footnoted text ([Google Books](#)) references the Fifth Lateran Council and *Vix Pervenit*, it is pretty unambiguous.

Additionally, we see that in the first part, the traditional teaching is reaffirmed that no gain is permitted. The second part of the canon appears to be a ambiguous mess. Gain is allowed if permitted by law and even greater than permitted by law, unless it is excessive. This is a strange way of putting it, because it appears the canon suggests that it is licit for gain over what the law permits is licit, which would suggest disobedience to the law is licit. After this it pulls back suggesting that the amount must

not be excessive and if a just title is present. However, the canon doesn't explain what just titles might exist or who has authority to establish a law for gain.

In sum, the canon is ambiguous in its phrasing and novel in its terminology. However, at the end of the day, it is not an act of the Magisterium, but a juridical act. It does address a few problems with the prior code that demanded entire restitution be made and issues with the denial of absolution by priests who did not understand where usury was really present.

To conclude, Cathy Caridi seriously errors with respect to the doctrine of usury. Ultimately, what the Church actually teaches is that usury is any excess or profit on a mutuum contract as seen in the definitive Magisterial documents. Usury as small or moderate gain is explicitly condemned.

[*] A couple of people have point out this post to me and I've meant to demonstrate some of its errors. However, it was recently posted on Twitter so I felt it would be good to address Cathy's mistakes.

Posted in [Links](#), [Reviews](#), [Usury](#) | Tagged [Vix Pervenit](#) | [Leave a reply](#)

Vix Pervenit – A Commentary

Posted on [August 31, 2020](#)

2

The encyclical *Vix Pervenit* is the last significant Magisterial statement on the usury doctrine. Its lucidity is refreshing. However, most Catholics are unaware of the document, down play it or misinterpret it. Here I provide the English and Latin versions of the central text as found in Denzinger. Below each paragraph I include my commentary to clarify and emphasize certain points addressed by Pope Benedict XIV and address errors the document condemns and common misinterpretations.

[My commentary of course has the authority of just some guy]

1. That species of sin which is called usury, and which has its proper seat and place in a contract of lending, consists in this: that someone, from the loan itself, which of its very nature demands that only as much be returned as was received, wishes more to be returned to him than was received, and therefore contends that some profit beyond the principal, by reason of the lending, is due to him. Therefore, all profit

1. Peccati genus illud, quod usura vocatur, quodque in contractu mutui propriam suam sedem et locum habet in eo est repositum, quod quis ex ipsomet mutuo, quod suapte natura tantundem dumtaxat reddi postulat, quantum receptum est, plus sibi reddi velit, quam est receptum, ideoque ultra sortem lucrum aliquod, ipsius ratione mutui, sibi deberi contendat. Omne propterea huiusmodi lucrum, quod sortem superet, illicitum et usurarium est.

of this sort, which surpasses the principal,
is unlawful and is usurious.

English: <http://patristica.net/denzinger/> , Latin: <http://catho.org/9.php?d=byd#cyp>

Paragraph 1

“...species of sin...”

Benedict here indicates that he is speaking about a special or specific kind of sin. This sin is evil in its nature. As such it is a specific kind of chosen behavior that is the subject of the condemnation. This is emphasized again and again throughout the encyclical.

Some authors have claimed that meaning of usury is so broad as to include almost any kind of economic injustice or oppression. This clearly makes usury a genus of sins rather than something specific in itself. Benedict clearly rejects this because he is speaking about a species of sin.

“...proper seat and place in a contract of lending [contractu mutui]...”

Having started by clearly stating that he is discussing a species of sin, Benedict defines in what kind of act or human behavior that is the matter or subject of the sin of usury. Benedict here means that from the behavior of lending in a mutuum usury arises or comes forth. This may be analogous to speaking that the proper place and origin of adultery or fornication is in the sexual act. It is from this act, wrongly done, that these sins arise.

Moreover, the specific act that Benedict identifies is lending in a mutuum. A mutuum is a type of transaction where the lender grants some property to the borrower to be returned in kind at a later date. The point is that the sin arises specifically from the contract here named.

This is wholly consistent with prior teaching on usury. The tradition of canonists and theologians found usury to be present solely in the specific behavior of contracting a mutuum for profit. Benedict clearly teaching here that usury as a specific sin arises from a specific kind of human behavior, namely contracting a mutuum.

Some claim that usury is in loans more generally. This would include all sorts of contracts that do not fall under the species of mutuum. Frequently this arises from treating the English term “loan” as equivalent to “mutuum.” Others error in the nature of mutuum and so include non-mutuum contracts. This is all false from what Benedict teaches. It is the mutuum that is the proper seat and origin of usury and other contracts, no matter how unjust otherwise, are not usurious.

“...that someone...”

Benedict goes on to explain why usury is evil. It is evil because of its nature the mutuum contract demands only an equal amount be obligated to return. Profit over the principal is not due the lender and so for him to exact it from the borrower is contrary to the nature of the act of lending itself and unjust.

Some maintain that usury is evil because it oppresses the poor or for some other extrinsic reason. This contradicts Benedict who clearly teaching that the evil is in the act of contracting a mutuum for profit itself and not extrinsically or accidentally in the oppression of the poor. This error frequently arises from a reading of Scripture and the Fathers that emphasize the oppression of the poor. However, even granting this reading, it would not therefore exclude a broader understanding where the poor are frequently oppressed by usury but that it is in itself evil irrespective of whether the borrower is poor or not.

Paragraph 2

2. Nor may any defense be summoned to justify that guilt, either from this fact, that the gain is not excessive and over much, but moderate, is not great but meager; or from this, that he from whom that profit is asked, because of the loan itself, is not a poor man but rich, who is not going to leave the sum given to him as a loan idle but is going to spend it advantageously to increase his fortune either by buying new estates or by transacting profitable business. Indeed, that person is convicted of acting contrary to the law of lending, which necessarily is concerned with the equality of what is given and returned, who, although that same equality has already once been rendered, does not fear to demand something more from someone, by reason of the lending itself, for which satisfaction has already been made on equal terms; and hence, if he should receive it, he will be obligated to restitution by reason of his obligation in justice, which they call commutative justice, and whose purpose it is both to preserve inviolably in human contracts the equality proper to each one, and to repair it exactly when it is not observed.

2. Neque vero ad istam labem purgandam ullum arcessiri subsidium poterit vel ex eo, quod id lucrum non excedens et nimium sed moderatum, non magnum sed exiguum sit; vel ex eo, quod is, a quo id lucrum solius causa mutui deposcitur, non pauper sed dives existat, nec datam sibi mutuo summam relicturus otiosam, sed ad fortunas suas amplificandas vel novis colmendis praediis vel quaestuosis agitandis negotiis utilissime sit impensurus. Contra mutui siquidem legem, quae necessario in dati atque redditi aequalitate versatur, agere ille convincitur, quisquis, eadem aequalitate semel posita, plus aliquid a quolibet vi mutui ipsius, cui per aequale iam satis est factum, exigere adhuc non veretur: proindeque, si acceperit, restituendo erit obnoxius ex eius obligatione iustitiae, quam commutativam appellant, et cuius est in humanis contractibus aequalitatem cuiusque propriam et sancte servare et non servatam exacte reparare.

English: <http://patristica.net/denzinger/> , Latin: <http://catho.org/9.php?d=byd#cyp>

“... any defense be summoned...”

Benedict here goes on to condemn a number of proposed reasons for excusing usury. This all reaffirms what he has already taught, namely that usury is evil in the act of lending itself and not due to extrinsic circumstances.

“... gain is not excessive...”

Here Benedict clearly and explicitly condemns the notion of moderate profit from a mutuum contract. Calvin is noted for the support and advancement of this position. He drew upon his interpretation of the Scriptures to emphasize this position. Moreover, this error is commonly believed among Catholics today and often includes mention of improved economic circumstances. However, Benedict clearly teaches that usury is evil in the act itself and this is not changed by the present circumstances.

“...that he from...”

Benedict further condemns the notion that usury is excused if the borrower is wealthy rather than poor. The condition of the borrower is extrinsic to the contract itself. Here Benedict has condemned usury on the intrinsic morality of the act. It doesn't matter the condition of the borrower vis-a-vis the evil of usury, though usury committed against the indigent is surely more evil.

“... not going to leave the sum idle...”

Benedict further rejects the notion that usury is excused because the borrower will make a productive use of it. The lender has no claim to the fruit of the labors of the borrower as Aquinas and other Scholastics have taught. Again what the borrower does with the money transacted in the mutuum is extrinsic to the mutuum itself.

In sum, Benedict has condemned three main excuses for usury: the quantity exacted, the condition of the borrower and the use of what is granted.

“Indeed...”

Benedict reaffirms the tradition that a usurer is obligated to restitution of the borrower. This restitution restores commutative justice violated by the act of usury. This again is consistent with the constant teaching of the Magisterium.

3. But by this it is not at all denied that sometimes there can perhaps occur certain other titles, as they say, together with the contract of lending, and these not at all innate or intrinsic in general to the nature of a loan, from which titles there arises a just and entirely legitimate cause of rightly demanding something more above the principal than is due

3. Per haec autem nequaquam negatur, posse quandoque una cum mutui contractu quosdam alios, ut aiunt, titulos, eosdemque ipsimet universim naturae mutui minime innatos et intrinsecos forte concurrere ex quibus iusta omnino legitimaque causa consurgat quiddam amplius supra sortem ex mutuo debitam rite exigendi. Neque item negatur posse multoties pecuniam ab

from the loan. Likewise, it is not denied that many times one's own money can be rightly invested and expended in other contracts of a different nature from the nature of lending, either to secure an annual income for oneself, or also to practice legitimate commerce and business, and thus procure an honest profit.

unoquoque suam per alios diversae prorsus naturae a mutui natura contractus recte collocari et impendi, sive ad proventus sibi annuos conquirendos, sive etiam ad licitam mercaturam et negotiationem exercendam honestaque indidem lucra percipienda.

English: <http://patristica.net/denzinger/> , Latin: <http://catho.org/9.php?d=byd#cyp>

“...it is not at all denied...”

In this section, Benedict references “certain other titles” that are “not at all innate or intrinsic” to the mutuum. It is worth noting that the explicit language that Benedict uses is that he does not deny these titles exist. That is he is not affirming any titles, specifically or generally, but rather very conservatively doesn't teach that they don't exist. The conclusion that can be drawn from this is that Benedict is silent to the existence of the titles.

Some claim specifically proposed titles from the Scholastic tradition are affirmed. In Brian McCall's book, *The Church and the Usurers*, when he discusses *Vix Pervenit*, he inserts *damnum emergens* and *lucrum cessans* into the encyclical and insists on Benedict's approval. This is clearly not supported by the text itself.
“...certain other titles...”

As mentioned this appears to reference the notion of extrinsic titles advanced by the Scholastics. This is likewise suggested by Aquinas (ST II-II, q. 78, a. 2, ad. 1) stating that contracting a separate agreement to prevent a loss is licit. What is important is that the excess is owned to the lender and that it is not from the act of lending himself.

While Benedict's language here is suggestive of the Scholastic theory, he makes no explicit reference to it. He merely references that certain title not intrinsic to the act of lending may exist. Zippy Catholic had suggested some obvious examples such as fraud.

“...in other contracts...”

Here Benedict discusses the possibility of profit from contracts “of a different nature from the nature of [mutuum] lending.” He again here uses the language mentioned above that he does not deny that such contract exist, but he neither affirms here that they do in fact exist.

Again, Benedict is discussing the nature of the mutuum contract. Contracts that differ in nature from the mutuum can provide either an annual income or honest profit from business. This appears to be an implicit reference to the *census* and *societas* contracts that had been approved in prior periods.

Some have erred in confusing the titles mentioned with the contracts. It is clear from the context that Benedict is referring to two different topics as he shifts the discussion at “Likewise...” The titles occur “together with contract of lending” whereas the second part mentions contracts “different in nature” from the *mutuum*.

4. But, just as in so many different kinds of contracts of this nature, it is well known that if the equality of each one is not observed, whatever is received more than is just, pertains, if not to usury (for the reason that there is no loan either open or secret), certainly does pertain to some other real injustice carrying likewise the burden of retribution; so, also, if all things are rightly transacted and carried out according to the scale of justice, there is no doubt that in these same contracts there occurs a multifold lawful manner and method of maintaining and carrying on human commerce and profitable business itself for the common good. For, far be it from Christian minds that they should think that, by making use of usury or similar harmful injustices, there could flourish a profitable commerce; since, on the contrary, we should learn from the divine proverb that “justice exalteth a nation, but sin maketh nations miserable” [Prov. 14:34].

4. Quemadmodum vero, in tot eiusmodi diversis contractuum generibus, si sua cuiusque non servatur aequalitas, quidquid plus iusto recipitur, si minus ad usuram (eo quod omne *mutuum*, tam apertum quam palliatum, absit), at certe ad aliam veram iniustitiam restituendi onus pariter afferentem spectare compertum est: ita, si rite omnia peragantur et ad iustitiae libram exigantur, dubitandum non est, quin multiplex in iisdem contractibus licitus modus et ratio suppetat humana commercia et fructuosam ipsam negotiationem ad publicum commodum conservandi ac frequentandi. Absit enim a Christianorum animis, ut per usuras aut similes alienas iniurias florere posse lucrosa commercia existiment; cum contra ex ipso oraculo divino discamus, quod ‘iustitia elevat gentem, miseros autem facit populos peccatum’ (Prv 14. 34).

English: <http://patristica.net/denzinger/> , Latin: <http://catho.org/9.php?d=byd#cyp>

“...so many different kinds of contracts of this nature...”

Here Benedict affirms that there are indeed many different kinds of contracts. In all of the various kinds of contracts equality must be observed for justice to be upheld. If this is not so then retribution is due. Benedict clearly affirms the constant teaching on commutative justice in all transactions and not simply the *mutuum*.

“...if not usury...”

Here Benedict affirms that contracts may be unjust even if they are not usurious. Moreover, he teaches that usury may not be present in these contracts because no *mutuum* “open or secret” is present. This reaffirms again that usury is only present where there is a *mutuum* present. This also suggests that there are contracts where a *mutuum* may be present in secret or cloaked. Just because a contract has the name or veneer of another putatively licit contract doesn’t imply that a *mutuum* is not secretly present and the contract is potentially usurious.

“...use of usury and similar injustices...”

Here Benedict rejects the notion that economic flourishing can arise from usurious and unjust dealings. Such injustice relatively impoverishes a nation and not simply economically.

5. But this must be diligently borne in mind, that one would falsely and certainly rashly persuade himself that there is always found and is everywhere present, either some legitimate titles together with a loan, or, even excluding a loan, other just contracts, by the aid of which titles or contracts, it is permitted, as often as money, grain, or something of that kind is lent to another, just so often to receive a moderate increase beyond the whole and sound principal. And so, if anyone thinks in this manner, he will without any doubt be in opposition not only to the divine Scriptures and to the judgment of the Catholic Church about usury, but even to human common sense itself, and to natural reason. For, this at least cannot escape anyone, that in many cases a man is bound to succor another with a pure and simple act of lending, especially when Christ the Lord teaches: “From him that would borrow of thee, turn not away” [Matt. 5:42]; and that, similarly, in many circumstances, besides the loan itself, there can be place for no other just and true contract. Whoever, therefore, is willing to consult his conscience, ought first to inquire whether, with a loan there is truly any other just title, or, apart from a loan there is a just contract, by reason of which the profit which he seeks may be returned immune and free of all guilt.

5. Sed illud diligenter animadvertendum est, falso sibi quemquam et nonnisi temere persuasurum, reperiri semper ac praesto ubique esse vel una cum mutuo titulos alios legitimos, vel, secluso etiam mutuo, contractus alios iustos, quorum vel titulorum vel contractuum praesidio, quotiescumque pecunia, frumentum aliudve id generis alteri cuicumque creditur, toties semper liceat auctarium moderatum ultra sortem integram salvamque recipere. Ita si quis senserit, non modo divinis documentis et catholicae Ecclesiae de usura iudicio, sed ipsi etiam humano communi sensui ac naturali rationi procul dubio adversabitur. Neminem enim id saltem latere potest, quod multis in casibus tenetur homo simplici ac nudo mutuo alteri succurrere, ipso praesertim Christo Domino edocente: ‘Volenti mutuari a te, ne avertaris’ (Mt 5, 42): et quod similiter multis in circumstantiis, praeter unum mutuum, alteri nulli vero iustoque contractui locus esse possit. Quisquis igitur suae conscientiae consultum velit, inquiret prius diligenter oportet, verene cum mutuo iustus alius titulus, verene iustus alter a mutuo contractus occurrat, quorum beneficio, quod quaerit lucrum, omnis labis experts et immune reddatur.

English: <http://patristica.net/denzinger/> , Latin: <http://catho.org/9.php?d=byd#cyp>

“...diligently borne in mind...”

Benedict emphasizes here that the justice of contracts is a matter of grave importance and needs to be diligently considered. We cannot be so negligent or naive as to think

that we can always and everywhere seek a profit justly and ignore the possibility of grave injustices from the contract which we enter. The problem of usury in transactions requires a significant degree of due diligence.

This contradicts some authors who wish to argue that usury is not a significant issue. The great many Catholics can go on with their lives without a concern for usury, because it is practically non-existent. Benedict teaches otherwise.

Moreover, others have erred in thinking that somehow Benedict expands usurious contracts to include others as well. This obviously contradicts Benedict's clear teaching throughout the encyclical. This paragraph in itself only admonishes men to diligence in examining contracts.

"...in many cases a man is bound to succor another with a pure and simple act of lending..."

This teaches that the mutuum is meant to be an act of charity. We are sometimes to seek not profitable investment even from just contracts, but rather to lend simply and charitably to our need neighbor.

"Whoever, therefore..."

Benedict ends by emphasizing that we ought to diligently examine our conscience about the contracts we enter whether or not they are mutua. We ought to examine carefully whether the profits from these contracts are indeed just and free from guilt.

Posted in [Magisterium, Usury](#) | [2 Replies](#)

Latin Sources on Usury

Posted on [August 28, 2020](#)

35

To be expanded with time...

Note, not all of these sources are equally reliable or orthodox, but they represent thinking about usury by prominent authors through several centuries.

13th Century

Albert Magnus (1200-1280), [Opera Omnia](#)
Giles of Lessines (?-1304), [De usuris in communi](#)
16th Century

Thomas Cajetan (1468-1534), [Summula Peccatorum](#)
Dominigo de Soto (1494-1560), [De Justitia de Jure](#)
Luis de Molina (1536-1600), [De Justitia et Jure](#)

Juan de Medina (1490-1546), [Codex de Restitutione et Contractibus](#)
Martin de Azpilcueta (1491-1586), [Enchiridion sive Manuale Confessariorum et Poenitentium](#)
17th Century

Leonardus Lessius (1554-1623), [De Justitia et Jure](#)
Juan De Lugo (1583-1660), [Disputationes Scholasticae et Morales](#)
18th Century

Pierre Collet (1693-1770), [Institutiones Theologiae Moralis](#)
Renee Billuart, O.P., [Cursus Theologiae](#)
St. Alphonsus Liguori (1696-1787), [Theologia Moralis](#)
Pope Benedict XIV (1675-1758), [De Synodo Diocesana](#)
19th Century

Tommaso Maria Zigilara (1833-1893), [Summa Philosophica in Usum Scholarum](#)
Gennaro Bucciaroni (1841-1918), [Institutiones Theologiae Moralis](#)
20th Century

Dominic Prummer, [Manuale Theologiae Moralis](#) (1960)
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McCall's Concluding Error

Posted on [August 4, 2020](#)

A [few weeks ago](#) I mentioned that part of McCall's error in his book *The Church and the Usurers* is that he frames the problem of usury as between loans for production and consumption. At the time I could not immediately find the passage, but I'll lay it out here:

The first principle of usury doctrine can be summarized thus: usury is the charging of a profit on the loan of money as distinguished from the investment in capital.

THE CHURCH AND THE USURER, 160

McCall of course wants to understand the *mutuum* as a loan for consumption that can be distinguished from an investment in capital. This puts him in the tradition of Belloc who tried to do the same. He goes on to write:

A loan can be defined for purposes of identifying transactions subject to usury law as the provision of funds that must be returned at a later date without the lender requiring the borrower to use the funds productively in the term.

IBID. 160-161

There are two things worth considering from this. First, is that this is not the definition of the *mutuum*. Indeed, no author treated the definition of the *mutuum* as having the absence of obligation to use the funds productively. Indeed I wrote in the margins of my book that this definition would include the *census*. There is no obligation in a *census* agreement that the seller use the funds productively. A needy farmer may sell the *census* and do with the funds as he sees fit, because they are his. Maybe he uses them for a pilgrimage to Jerusalem or to pay back a *mutuum* or something else.

Moreover, this appears at least to be in conflict with *Vix Pervenit*. Therein Benedict XIV forbids usury because “the money borrowed is not left idle, but is spent usefully, either to increase one’s fortune, to purchase new estates, or to engage in business transactions.” I may in fact lend in a *mutuum* to a friend with tacit agreement that he will use it productively to improve his condition. I however would not be obliged to some interest for that reason, because the equivalency that usury contradicts arises from the nature of the contract itself as Benedict clearly teaches. McCall goes on to admonish earlier thinkers because:

Some writers often focused their attention on the form of the transaction. Was it a form associated with a business partnership or investment (societas or census) or was it a legal form associated with the lending of money (mutuum) rather than focusing on the economic reality of the use of funds?

IBID. 161.

This would indeed include Benedict XIV who insisted on the nature or form of the contract being a *mutuum*. McCall appears to brush this off as the Scholastics being unable to deal with the complexities of finance and now this can be sorted out because we have the “ability to distinguish business activity from personal consumption.” Ultimately, McCall wants to make usury about what the lent thing is used for rather than the nature of the agreement. An analogy would be seeing the evil in contraception as related to purpose of the act (avoidance of pregnancy) rather than the act of contracepting itself. The evil is in the act itself, namely effecting a *mutuum* for profit or using contraception, rather than the purpose attributed to those acts. There is a parallel of moral thinking about usury here and the opposition to NFP as a licit form of family regulation.

Posted in [Books](#), [Quotes](#), [Twitter](#), [Usury](#) | Tagged [Brian McCall](#), [The Church and the Usurers](#) | [Leave a reply](#)

Loans for Babies is the Result of Accepting Usury

Posted on [August 1, 2020](#)

1

One of the ways of understanding usury is that the lender has a claim against the person himself. In exacting some excess or profit he treats that claim as a property claim, such as when he rents out something in a lease. Thus, he treats his claim against a person as a property claim from which he can derive a profit.

In such a world as our where usury is approved and accepted as just obvious, it makes sense that laying a claim to a couple [making children](#) just makes “[100% logical sense](#).” The obvious perversity of this claims, as with usury, falls under the radar because we must keep the [economic machine](#) going. Society and the economy would [collapse](#) if we were to treat people as people rather than objects.

My modest proposal would be that the fertility crisis would be solved by treating people as persons rather than more of the same.

Posted in [Musing](#), [Twitter](#), [Usury](#) | [1 Reply](#)

Sollicitudo – Nicholas V

Posted on [September 29, 2020](#)

Vt incolæ & habitatores, ac Vniuersitates Regnorum Siciliæ, citra & ultra Pharam, contractus censuales, modo tamen & forma de quibus hic, inter se contrahere libere & licite possint.



NICOLAUS Episcopus, seruus seruorum Dei, ad perpetuam rei memoriam. Sollicitudo pastoralis officij fores nostræ prouidentię pulsare non desinit, vt indemnitati ac statui proprio fidelis populi, curæ nostræ cœlitus commissi, iuris moderando rigorem, per optimæ prouisionis remedia, quantum ex alto nobis permittitur, salubriter consulamus. Sane, (sicut si dignorum relatione didicimus,) in Regno Siciliæ, ac certis alijs dominijs & terris, charissimi filij nostri Alphonsi, Aragoniæ, & vtriusque Siciliæ Regis illustris, auaritiæ cœcitas, & danandæ ambitionis improbitas, quorundam oculos adeo ex cœcauit, vsurariaque prauitas, in his in partibus, tantum excreuit, quod incolæ, & habitantes partium illarum, pecunijs indigentes, eas vix aliter quam scœnatorum opera (quasi inauditum scœnus exercentium) consequi possunt; & cum eas acceperint, si in tempore, percepta non restituant, breui eorum bona, insatiabili vsurarum voragine, miserabiliter consumuntur; & quod in dominijs, & terris ipsius Regis, ultra montes constitutis, videlicet in Regnis Aragoniæ, Valentiniæ, & Maioricarũ, ac principatu Cathalonix, & comitatibus Rosilionis, & Ceritanix, vniuersitates, & singulares personæ, tam ecclesiasticæ quam seculares huiusmodi, pecunijs indigentes, vt cum minori incommodo eas habere possint, per venditiones annualium censualium (quæ mortua huncupantur) super domibus possessionibus, & proprietatibus, specialiter, vel etiam generaliter super omnibus bonis, redditibus, emolumentis, iuribus, & rebus eorum (mediante tamen instrumento gratiæ redimendi onera eorum) sibi vt plurimum prospicere, & consulere consueuerunt. Quod in prædictis eiusdem Regni partibus, & Regnis ultra montes constitutis, non solum in longam consuetudinem (de cuius contrario memoria hominum non existit) more vtentium deductum est, sed etiam per municipalia huiusmodi Regnorum & partium iura, per Regem ipsum seu eius prædecessorem, cum consensu trium brachiorum (videlicet Ecclesiastici, Militaris, & Regalis) promulgata, specialiter confirmatur. Cum itaque multis incolis, & habitatoribus partium & dominorum eiusdem Regis, ultra montes constitutorum, indigentibus, per huiusmodi censualium venditiones subueniri, ipsique scœnatorum vsuris eximi possint; sed quia in hoc, pecunijs abundantes, dubitant vsurariam prauitatem committere, & sic eisdem indigentibus more præmisso succurrere formidant, in indigentium detrimentum, & scœnatorum quorundam euidentis incrementum; pro parte eiusdem Regis, afferentis se, & subditos serenitatis suæ quamplures grauium vsurarum voraginibus, magnis hæcenus pecunijs exhaustos existere, alios quoque indies pecunijs egentes, scœnore magis atque magis opprimi & vexari; nobis fuit humiliter supplicatum, vt ei paterno compatientes affectu, inprimis de opportuna prouisionis opere succurrere, præfatasque censualium venditiones, cum clausulis & cautionibus, ad earum valitudinem, inter venditores & emptores mutuo consensu ineundis, absque læsione conscientię, in Regnis Siciliæ, citra & ultra Pharam fieri posse, decernere, & declarare, de benignitate apostolica dignaremur. Nos igitur pro debito pastoralis ministerij nobis diuinitus iniuncti, super his salubriter prouidere, ac statui, & indemnitatibus incolarum & habitatorum Regnorum & terrarum dicti Regis, citra montes constitutorum, præsentium & futurorum, quantum cum Deo possumus, sub

uenire cupientes; & attendentes quod clero terrarum & dominiorum ipsius Regis, citra montes constituto-
in suis olim indigentibus per venditiones praedictorum censualium, auctoritate Apostolica, pluries consulto
& prouisum fuit; praefati Regis in hac parte supplicationibus inclinati, tam eidem Regi, quam huiusmodi Re-
gnorum Siciliae, citra & ultra Pharus, omnibus & singulis incolis, habitatoribus, ac locorum, ciuitatum, & te-
rrarum vniuersitatibus, praesentibus & futuris, huiusmodi censualia, super rebus & proprietatibus suis, ac faci-
tatibus & emolumentis eorundem, instrumento gratiae, pro consimili pretio illa redimendi, mediante (du-
modo annualis census huiusmodi censualium, decimam partem principalis recepti seu precij eorundem, non
excedat) inter se contrahendi, vendendi, & emendi, cum opportuna contrahentium securitate, tuitione, & in-
demnitate; ac cum potestate vendentes personas, eorumque proprietates, redditus, iura, iurisdictiones, censu-
ac omnia & singula mobilia & immobilia bona, obligandi, & obligari faciendi; ac etiam quascunque alias ob-
gationes & submissiones cuicumque foro, nec non renunciationes, promissiones, stipulationes, poenis, iuri-
mentis, & alijs cautionibus vallatas, & alia quaecunque, de quibus inter ementes & vendentes huiusmodi ce-
sualia, conuentum & in pactum deductum fuerit, plenam licentiam, & liberam, auctoritate Apostolica, ten-
re praesentium, concedimus facultatem, Decernentes & declarantes, eisdem incolis & habitatores, ac ciui-
tatum & terrarum vniuersitates, censualia praedicta, modo praemisso, in Regnis ipsis Siciliae, citra & ultra Ph-
arus, libere & licite contrahere, ac emere, & vendere posse, neque propterea usurariam prauitatem comm-
tere (dummodo alias quam ut praemittitur, quodlibet annum censuale, decimam partem recepti seu pre-
venditionis ipsius, non excedat,) & pensionibus seu annualitatibus illorum, in sortem non computatis, pro t-
tali redemptione, praeter principalem summam, nihil ultra percipiatur ab emptore, vel exhibeatur a vende-
re. Non obstantibus constitutionibus, & ordinationibus, ac priuilegijs Apostolicis, nec non statutis, etiam m-
unicipalibus, vel regalibus, & consuetudinibus ciuitatum, & terrarum Regnorum praedictorum Siciliae, cit-
& ultra Pharus, etiam iuramento, confirmatione Apostolica, vel quacunque alia firmitate roboratis, etia-
si de eis facienda esset specialis mentio (quae hic haberi volumus, & habemus pro sufficienter expressis) con-
trariisque contrarijs quibuscunque. Nulli ergo omnino hominum liceat hanc paginam nostrae concessionis, co-
stitutionis, & declarationis, infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare praesur-
pserit, indignationem omnipotentis Dei, & beatorum Petri, & Pauli Apostolorum eius, se noverit incursur-
Datum Romae apud sanctum Petrum, anno incarnationis Dominicae, millesimo quadringentesimo quinquag-
esimo secundo, pridie Calend. Octobris, Pontificatus nostri anno sexto.

Source: https://www.google.com/books/edition/Collectio_diversarum_constitutionum_et_l/Y05KAAAACAAI?hl=en&gbpv=1

Transcription (uncertain words in **bold**)

Vt incolae & *habitatores*, ac Vniuersitates Regnorum Siciliae, citra & ultra Pharus,
contractus cen-
suales, modo tamen & forma de quibus hic, inter se contrahere libere & licite possint.
N I C O L A V S Episcopus, seruus seruorum Dei, ad perpetuam rei memoriam.
Solicitude

pastoralis **officij** sores nostrae prouidentiae pulsare non definit, ut indemnitati ac
starui prospe
10 fidelis populi, curae nostrae caelitus commissi, iuris moderando rigorem per
optimae **pro**
uifionis remedia, quantum ex alto nobis permittitur, salubriter **consulamur**. Sane, (
ficut fide
dignorum relatione didicimus,) in Regno Siciliae, ac certis alijs **dominijs** &
terris, **charissimi**
filij nostri *Alphonsi*, Aragoniae, & vtriusque Siciliae Regis illustris, auaritiae coecitas, &
dam-
nandae ambitionis improbitas, quorundam oculos *adeo* excoecauit, usurariaque
prauitas, il-
lis in partibus, tantum ex creuit, quod incolae, & habitantes partium illarum, pecunijs
indigentes, eas vix ali-

ter quam foeneratorum opera (quasi inauditum foenus exercentium) consequi possunt; & cum eas acceperint,

si in tempore, percepta non **restituunt**, breui eorum bona, insatiabili vsurarum voragine, miserabiliter confu-
To Be Edited:

muntur, & quod in dominijs, & terris ipsius Regis, vltra montes confinitus, videbunt in Regnis Aragontz, Valentiz, & Maioricani, ac principatu Cathaloruz, & comitanbus Rosilionis, & Cuitaniz, vntuerfaates, & *fungulares* personarum, tam ec *clefialitx* quam fcculares huiusmodi, pecunijs indigentes, vt cum memorati incommodi C32 habere possint, per venditiones annuorum censuum (*quod* mortua huncupantur) super domibus, possessionibus, & proprietatibus, *fpecijitcr*, vcl etiam generaliter super omnibus bonis, redditibus, emolumentis, iuribus, & rebus eorum (medante tamen instrumeto grati & rectimendi onera eorum) sibi vcl plurimum propicere, & confulc *rc confucucrunt* Quod in praeiudicium Regni partibus, & Regnis vltra montes confinitis, non solum in longam consuetudinem (de cuius contrario memoria hominum non exillie) more ventium deductum est, sed *cann* per municipalia huiusmodi Regnorum & partium iura, per Regem ipsum, seu eius praeiudicium eiforem, cum *con* sensu tantum brachiorum (videlicet Ecclesiasticis, Miluarts, & Regalis) promulgata, specialiter confirmatur. Cum itaque multis incolis, & habitatoribus partium & dominorum eiusdem Regis, vltra montes confinitorum, indigentibus, per huiusmodi censuum venditiones subueniri, spemque fce neratorum vsus eximi possint; sed quia in hoc, pecunijs abundantius, dubitant vsurariam praedatam committere, & *fic cifdc* *indigennibus* more praetextu fuccurrere formulant, in indigentium detrimentum, & foeneratorum quorundam euidens incrementum; pro parte eiusdem Regis. affertis *fe*, & subditos ferenitatis fuz, quamplures grauium vsuarum voragimbus, magnis haec pecunijs exhaustos existeret, alios quoque in diuersis pecunijs egentes, censore magis atque magis opprimit & velari; nobis fuit humiliter supplicatum, vt eis pacerno componentes affeui, in primis de opportunitate prouisionis opere *fuccurrere*, praefatasque censuum venditiones, cum laudibus & cautionibus, ad earum validitatem, inter venditores & emptores mutuo consensu ineundis, *abrque* lzfione confcientiz, in Regnis Siciliae, citra & vltra Pharam fieri polle, deinceps, Sc declarare, de beneficiis, iustitiae potestate cadignaremur Nos igitur pro debito pafloribus (minime) nobis diuinitus iniunctis, luper lus falubriter prouidere. ac flatui, & indemnitatibus incolarum & habitatorum Regnorum & terrarum ditta Reys, *clua* montes conlia: ucorum, praefentiumque futurorum, quantum cum Dco possumus, futs. nenir: tupientes; de artendentibus quod ciclo terrarum & dominiorum ipsius Regis, citra montes confinitus, in futs olim indigentibus venditiones praedictorum censuum, autnritate Apollotica, plures confulturo & proutrum faiti praefau Regis an hac parte supplicanibus iacinau, tam eidem Regi, quam huiusmodi Regnorum Siciliae, cara & vltra Pharam, omnibus & singulis incolis, habitationibusque locorum, cluitatum, tic terrarum voiuertatibus, praesentibus & futuri 4, huiusmodi censuum, super rebus & proprietatibus futs, ac facultatibus & emolumentis eorundem, instrumeto grati, pro confinitis pretio dila redimantur, mediante dummodo antatulis celfis huiusmodi censuum, de. itnam pattem principalis *recepti* seu precti eorundem, non excedat) inter se contrahendi, vendendi, & emendi, cum opporcuna contrahendum fecut

itate, tumone, & inelemnitate; ac cum pmellate vendentes perfonas, enrumq; proprietates, teditur, tura, turdditiones, cenfus ac omoia & fingula mobdia & immobilit bona, obliganda, & obbgari facicndt; ac cram quaccurui; altas obligationes & fubmiffiones cuicumque foro, nec non rtmunciationes, promiffiones, llipulationes, pcems, ruramernis, & alijs cautionibus vallatas, & alia quicumque, de 911tb•S inter cmcntcs & *vendentes* hututinoth cenfualta, conucntum & in p2eiLIT deduCtum fucrit, plcnam licentiam, & Itbcram, auttorstate Apollolics, tencsreprzfentium, concedimus facultatem, *Decernenres* & declarantes, eoldemincolas & habitatores, ac cuait2t11M & tccrarum vntuerfitates, ccrilualta przdiaa, modo przmitfo, tn R eg nis tpfis Sicthz; cutra & vltra Phatu:n, libere & licite contrahere, ac emere, & vendere polfe, neq; propterea vfinariam praunatem committere (dummodo alias quam vr przmutitur, , quodlibet annuum cenfuale, dccimam partcm *receptu* feu pretiivendstioats mfitu, non excedat,) & pentionibus fcu annuabratibus illorum, in fonem non computans, pro totah redempttone, przter prinapalem fummam, nthil vltra percipiatur ab emptnre, vcl exhibeatur a vendnore. Son obitanribus contitutionthus, & ordinationtbus, ac priudeg9s Apofiolicts, nec non fiatutis, ettam muntcipalibus, vel regahbus, & confuetudsnittibus ciuirarum, at terrarum Rcgnotum przditorum Siciliz, citra & vltra Pharum, etiam turamento, confirmatione Apotlnhca, vel quacurnque alta firmitate roboraus, ettarn fi de cis facienda effer fpccialis mentto (quz hic haberi volumus, & habemus proifufficienter crpr ckfis) czterifque contranis qutbuicunque. Nulla ergo omnino hominum liceat hanc paginam nottrz concesfionts, conlbrutionis, & declarationis, infringere, vel ei aulu temenrio contraire. St quis autem hnc attentare przfumpferir, indignationem omnipotenus Dei, & bcatorum Petri, & Pauli Apoitolorum eius, fe nouerit incurfulti Datum Romz apud farnflum Pcrrum, anno incarnarionis *Dominicz*, mtilefimo quadringentefimoquinquago-fixo fecundo, pridic C.alcni Otababris, Ith0313 12 othi 41413 fczco

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Woods and Usury

Posted on [September 25, 2020](#)

2

Thomas Woods' book, *The Church and the Market* (C&M), received some significant attention when it was first released. Woods, himself a self identifying traditionalist, became an object of ridicule for his work, which was subject to a great deal of repudiation by various authors. Of the articles I've seen on it Wood's treatment on usury is discussed only briefly and doesn't include the documentary citations that undermine his position. Given the purpose of this blog and that Woods book is still cited by Catholic, some positively others not, I will address his discussion on usury in detail.

Admittedly, C&M is not a work on usury specifically. However, the manner in which it treats usury is important. As we shall see it proposes theories of moral and dogmatic theology that are irreconcilable with the Catholic Faith. Moreover, usury is a matter of grave moral concern and the treatment of the topic does that reflect that.

Scripture and the Fathers

As with most authors approaching usury, Woods begins by looking at the Scriptures and the Church Fathers on the topic. His review of this is very brief and somewhat misleading. His account of this amounts to only a couple of paragraphs. This really

doesn't do justice to the degree and scope of the condemnation of usury we find in the Scriptures and the Fathers. Therefore, let us dig a little deeper.

To this end, the article, "The Teaching of the Fathers on Usury," by Robert P. Maloney is especially helpful.¹ Regarding Scripture, C&M makes the claim that Psalm 14 [15] is "the only scriptural verse used to support the usury ban."² C&M doesn't provide any citation for this claim and it is simply false. Maloney's research shows that the early Church Fathers used Psalm 15 & 54, Exodus 18 & 22, Deuteronomy 15 & 23, Leviticus 25, Nehemiah 5, Jeremiah 9 and Luke 6, in their condemnations of usury.³ Indeed, one of the earliest condemnations of usury comes from Clement of Alexandria (c. 150-215) making use of Ezekiel 18.⁴ C&M also claims that Luke 6:35 was not used in condemning usury until the twelfth century, yet it was used by Tertullian, St. Basil, St. Ambrose and St. Jerome.⁵

C&M's claim about Psalm 14 [15] gives the impression that the Scriptural evidence against usury must be extraordinarily thin when it is not. Let us consider some of the verses mentioned above:⁶

"Thou shalt not molest a stranger, nor afflict him: for yourselves also were strangers in the land of Egypt. You shall not hurt a widow or an orphan. If you hurt them they will cry out to me, and I will hear their cry: And my rage shall be enkindled, and I will strike you with the sword, and your wives shall be widows, and your children fatherless. If thou lend money to any of my people that is poor, that dwelleth with thee, thou shalt not be hard upon them as an extortioner, nor oppress them with usuries." (Exodus 22:21-25)

"Take not usury of him nor more than thou gavest: fear thy God, that thy brother may live with thee. Thou shalt not give him thy money upon usury, nor exact of him any increase of fruits." (Leviticus 25:36-37)

"Thou shalt not lend to thy brother money to usury, nor corn, nor any other thing: But to the stranger. To thy brother thou shalt lend that which he wanteth, without usury: that the Lord thy God may bless thee in all thy works in the land, which thou shalt go in to possess." (Deut. 23:19-20)

"And my heart thought with myself: and I rebuked the nobles and magistrates, and said to them: Do you every one exact usury of your brethren? And I gathered together a great assembly against them," (2 Esdras (Nehemiah) 5:7)

"Better is the poor man walking in his simplicity, than the rich in crooked ways. He that keepeth the law is a wise son: but he that feedeth gluttons, shameth his father. He that heapeth together riches by usury and loan, gathereth them for him that will be bountiful to the poor. He that turneth away his ears from hearing the law, his prayer shall be as abomination. He that deceiveth the just in a wicked way, shall fall in his own destruction: and the upright shall possess his goods." (Proverbs 28: 6-10)

"And if he beget a son that is a robber, a shedder of blood, and that hath done some one of these things: Though he doth not all these things, but that eateth upon the mountains, and that defileth his neighbour's wife: That grieveth the needy and the poor, that taketh away by violence, that restoreth not the pledge, and that lifteth up his eyes to idols, that committeth abomination: That giveth upon usury, and that taketh an increase: shall such

a one live? he shall not live. Seeing he hath done all these detestable things, he shall surely die, his blood shall be upon him.” (Ezekiel 18:10-13)

“And every one hath committed abomination with his neighbour’s wife, and the father in law hath wickedly defiled his daughter in law, the brother hath oppressed his sister the daughter of his father in thee. They have taken gifts in thee to shed blood: thou hast taken usury and increase, and hast covetously oppressed thy neighbours: and thou hast forgotten me, saith the Lord God. Behold, I have clapped my hands at thy covetousness, which thou hast exercised : and at the blood that hath been shed in the midst of thee. Shall thy heart endure, or shall thy hands prevail ill the days which I will bring upon thee: I the Lord have spoken, and will do it.” (Ezekiel 22:11-14)

There are a few notable things about all these passages. The first is the wrath of God that will fall upon the usurer. God will destroy him and make his wife a widow and his children orphans. Moreover, in Ezekiel this sin is grouped together with other abominations, such as adultery, idol worship, murder, theft and so forth. The Scriptures do not treat usury as some small concern. While there are places where usury is recognized as a lack of charity, it is not convincing that Scripture treats it merely as that.

The single passage granting some consolation to the usurer is in Deuteronomy interpreted as allowing usury from strangers. This juxtaposed to the Exodus passage where usury is condemned even from a stranger raises some questions. The Deuteronomy passage has long been understood as God’s toleration or dispensation because of the hardness of hearts of the Israelites, much like the toleration of divorce.² Moreover, the “strangers” has also been interpreted as referencing the enemies of Israel, such as Amalech, the Amorite.³ In contrast, St. Jerome sees this as the first stage in God’s progressive pedagogy. He at first tolerates usury to strangers, but with the Prophet Ezekiel He forbids it entirely and finally in the Gospel it is brought to perfection in removing even the hope of a return.² In sum, the Scriptures unquestionably and harshly condemn usury. It is compared to the worst of sins and God demands the life of the usurer. Usury is not a small or insignificant thing for the Word of God.

C&M passes over the Church Fathers by citing the Catholic Encyclopedia article on usury. There is no question that the Church Fathers universally condemned usury. However, the article quote say there is no “general doctrine” on usury, the condemnation reduces to mere rejection of avarice and lack of charity rather than justice and the question of moderate interest never arises.

It is certainly true that the Fathers do not engage in the sort of precise systematic dialectic on usury that would later develop among the Scholastics. However, there was certainly a consensus among the Fathers that usury consisted in taking any more above the principal on a loan. Moreover, Sts. Ambrose¹⁰ and Jerome¹¹ condemn this not just for money loans but usury taken on any type of thing lent. Among the Fathers there was also an attempt to articulate the evil of usury beyond the oppression of the poor. Sts. Gregory of Nyssa, Basil, Ambrose and Gregory Nazianzen consider the nature of money.¹² Given the sterility of money, they consider usury to be contrary to nature. In this sense, it appears that the Fathers consider usury not to be

simply oppression of the poor but rather intrinsically evil, because it stands contrary to nature.

Additionally, several of the Greek Fathers treat usury as evil even when committed against the rich. St. Basil admonishes the borrowers, “Are you rich? Do not borrow. Are you poor? Do not borrow. If you are prospering, you have no need of a loan; if you have nothing, you will not repay the loan.”¹³ This takes place in the context of avoiding being harmed by usury and suggest that the Father acknowledges usury against the rich as well as the poor. St. Gregory of Nyssa¹⁴ also condemns usury against even the wealthy.

Moreover, we see similar condemnations among the Latin Fathers of usury taken against the wealthy. Consider the following passages from the Fathers:

“What shall I say of usury recovered by the judges in the courts of Justice? Is rapine committed on the rich less cruel than the usury that is squeezed from the bowels of the poor? It is desirable that these, and all such ill-begotten goods, be restored to the owners.” (Augustine Epistle 153¹⁵)

“To evade the law, many persons lend to merchants, but receive the usury in kind. This is fraud, and only an evasion of the law. Do you expect to be religious, when you receive a bounty from your merchant-debtor?” (St. Ambrose, De Tobia 49)

“What, if the Divine Lender ask you briefly whether he had lent to you when you were in need or not in need? If you answer that he lent you when you were not in need, he may reply that it was fitter that he had lend to the needy. But why does he require more from the rich? Others have the habit of receiving gifts of various sorts from the borrowers, not understanding that usury of all kinds is forbidden.” (St. Jerome, Commentary on Ezechiel 18)

The Latin Fathers in these passages show that usury is evil even when it is exacted from the merchant or the wealthy. While taking usury from the poor is especially heinous, it is still evil when it is exacted from the rich. Augustine recognizes that this just a cruel when committed against the rich, while Ambrose calls it a fraud and evasion of the law even when drawn from merchants rather than the poor. Jerome rounds this out by condemning “usury of all kinds.” Usury is not simply a form of oppression of the poor and it appears that Jerome saw it as intrinsically evil.

In sum, the Fathers are agreed that usury is a grave evil. Several argue that it is contrary to nature and some that it is not contrary simply to charity but justice or completely forbidden. Indeed, from this perspective the very notion of “moderate interest” would sounds like “moderate theft” or “moderate murder.” This treatment stands in contrast to what C&M quotes from the Catholic Encyclopedia.

Tackling a Thomistic Strawman

C&M proceeds to discuss the arguments of Thomas Aquinas. He begins by quoting the responses from the *Summa Theologica* and the *De Malo*. This treatment of the Angelic Doctor is superficial at best. It begins with two objection and then follows John T. Noonan in his discussion on Aquinas. Let us begin by looking at the immediate objections.

C&M first takes note of Aquinas' example of selling wine and its use in the *Summa Theologica*. According to Aquinas the use of wine and its substance cannot be separated, since to drink the wine is to use it up. Therefore in selling the wine you also sell the use. Charging for the wine and then additionally charging for its use is to sell the same thing twice which is clearly unjust. C&M's response is: "But when in all of human history has such a transaction been seen? Why, on the other hand, is the phenomenon of interest so widespread, across time and across cultures? Might there be a fundamental difference here?"

To the first question, it obviously begs the question. The fact that it has not been proposed in such a way, does not mean that it has not happened. If the case was rephrased as granting wine, but receiving back the same amount plus some additional, this surely has happened in history. Indeed, we see St. Jerome gives the example of 10 bushels of wheat returned for 15 later as an instance of usury.¹⁶ Aquinas clearly phrases it this way and provides the example as a sort of intuition pump to help understand what is going on in the transaction and its manifest evil.

To the second question, this also begs the question. The case of lending at interest is analogous to the case of wine and this is the reason that Aquinas uses it. The use of money in the transaction that Aquinas is referring to involves money being "consumed" or alienated similar to the way that wine is consumed or alienated. Charles Billuart, OP draws the distinction here between wine that is "consumed" physically, where it is alienated from the person physically, and money that is consumed morally, where it is alienated through exchanged or transfer of ownership.¹⁷ C&M's questions demonstrate a failure to grasp the fundamental problem that Aquinas is dealing with. These questions simply distract from actually grappling with the problem at hand. It is unsurprising that such questions did arise among the more considerate commentators of Aquinas.

C&M's second "objection" can hardly be classified as such. The entirety of this objection is "So what? What exactly is wrong with that, particularly since both parties agree to the terms?" Rather than a serious objection it is a moral theory posed as an objection. It again just begs the question in favor of a moral theory that Woods makes no attempt to defend and is frankly contrary to the Catholic Faith and right reason.¹⁸ The questions posed by C&M, if investigated carefully and diligently bear out the truth, but the superficiality of the treatment here is evident.

To round out his discussion of Aquinas, Woods follows objection that Noonan articulates in his *The Scholastic Analysis of Usury*. Before looking at those objections, I'd like to propose that Noonan is not a reliable commentator of Aquinas. Noonan begins by approaching Aquinas' discussion on the nature of consumption in the *Summa Theologica* and the *De Malo*. He notes that Aquinas states that the substance and the use of the thing are the same, because in its use it consumes the thing. Noonan takes this to mean that some things are "naturally destroyed their use" and so too in the case of money. He writes,

"[St. Thomas says:] the deterioration of a house is *per accidens*, but money deteriorates so completely that it disappears altogether; hence its use and substance are identical, and therefore no charge for its use can be made... St. Thomas' case rests finally, then, on metaphysical rather than legal grounds. It is the real distinction between accidental and essential change which forms the foundation of his reasoning."¹⁹

Noonan's interpretation of Aquinas is frankly bizarre. He claims that what Aquinas means is that money exchanged goes through a substantial change; money is destroyed when used. This would be equivalent to saying that selling an animal kills it. Such a manifestly false and absurd position attributed to Aquinas should make one

skeptical of Noonan's ability to properly interpret Aquinas. As we saw in Billuart's comments above, he clearly distinguishes alienation through physical destruction and exchange, which Aquinas also clarifies in the *De Malo*. The absurdity of Noonan's commentary is all the more important because his objection used by C&M makes use of this notion of money as consumed.

Returning to the objection, the first part of the argument that C&M takes from Noonan concerns the contract of *societas*.²⁰ In this contract, one partner provides money to the a merchant or artisan. The merchant then makes use of this money in his trade to generate some profits. The investing partner then gets to receive some of the profits because of his contribution. Aquinas endorses this sort of contract, because the investing partner maintains his ownership of the money.²¹ Consequently, this sort of arrangement is not an instance of usury.

The objection suggests this apparently contradicts what Aquinas has said before. Aquinas has said that money is consumed in being used and thus ownership is transferred. This is the very nature of money. So, it appears that when the investing partner grants it to the merchant and he consumes it, so too goes the ownership. So, it would seem then that the investing partner would have no claim to the profits of the business because his ownership went with his money as in *mutuum* loan contract.

However, the objection ignores some other key passages that avoid the misunderstanding presented by Noonan. In the *Summa Theologica*, Aquinas argues that a silver vessel has more than one use, among which are storing liquid or "sinking it in exchange." He notes silver coins as well have more than one use, namely sinking in exchange or being displayed.²² Noonan recognizes that the difference is a matter of contract, but still reduces the problem to the nature of money.²³

In the *De Malo*, Aquinas makes matters even clearer. There he notes that even a pair of shoes can enter into an usurious contract, because even though its primary use is wearing it can be sunk in exchange. The point is rather that the nature of the property is not the problem or driving force behind the argument, but rather the nature of the contract. Indeed, Aquinas gives the further example of a grant of money sealed in a purse for security, which is a sort of lease agreement and not a loan or *mutuum*. Because it is not a *mutuum*, it is not usurious.²⁴ So, it is again the contract that is the deciding factor in the problem of usury rather than the nature of the property. Noonan glosses over this, saying this is merely a "juristic quibble."

In the relevant contract, namely the *mutuum*, the good is granted for a return in kind. This means that in return for his goods, the lender receives a claim to goods "in kind." However, "goods in kind" don't actually exist, because it is an abstraction. Thus, the lender receives no property other than the promise of the borrower for return.

Consequently, when the lender enters the *mutuum* he grants the whole ownership of the property to the borrower. The borrower is authorized to make use of it as he sees fit, including alienating it. If he did not have the ownership, then he could not justly alienate the thing. Thus, since the contract authorizes that the borrower can alienate or consume the thing granted, we know that the lender has no further claim to it and thus cannot charge for something more. Hence, the lender has recourse only to the person of the borrower and to no real property. It is this absence of a claim to which Aquinas refers when he says that the usurer charges for what does not exist.

The *societas* contract is structured in an essentially different way, such that the retains his claim not present in the *mutuum*. To make this clear, suppose that I ask a friend to go to the store and buy me groceries. I give him the money and he goes and buys them. He has truly alienated or consumed the money, but the goods he purchased with them are still mine. My claim to them rests upon my subsequent claim to the money, which didn't transfer to my friend in our agreement. Similarly, if instead of a friend it is a

business partner and we agree that I'll put my money into his business, he may alienate it in his work, but I obtain a claim over his business because he used my money for his business. Consequently, I have a consequent claim to the profits of the business as well. Again, the thing that matters is not the nature of the property, but rather the nature of the contract.

The result for Noonan (and C&M) is that the criticism of Aquinas fails to criticize Aquinas. It is rather addressed to a strawman. For Aquinas it is not the nature of the property qua consumptible, but rather the nature of the contract that authorizes consumption or not.²⁵ With this the whole *societas* argument is a non-sequitur, so the other two points Wood cites are not even relevant. However, I'll address them briefly in how they further misunderstand the topic.

The second claim is that Aquinas makes an ad hoc reference to risk and ownership. In the *societas* the investing partner retains the risk, whereas in the *mutuum* the risk passes to the borrower. Of course this note is not ad hoc, but straightforward. Risk is a concomitant of ownership. When I hold ownership of a thing, I also hold the risk of its destruction, loss or damage. In the *societas*, the investing partner retains the risk of the business and so can suffer the loss of what is his, whereas the lender transfers wholly the ownership and suffers no such risk of loss. Indeed, Aquinas notes specifically that the borrower must pay all the principal back come what may to the property, because the ownership has transferred. Risk then is a natural consequent of the nature of ownership and acts as a sign of who is the owner, rather than an ad hoc assertion.

C&M then goes on to propose the third objection, namely what justifies the investing partner's profit. He suggests that since the profit is sought from money that the profits are not justified, because "[a]ny surplus value gained from money, [Aquinas] contends, is due to the work of the man who uses it and who therefore is alone entitled to it."²⁶ This appears to be a reference to a remark of Aquinas in his Commentary on the Sentences, where he notes that the lender in a *mutuum* does not have a claim to the industry of the borrower if he generates some profits.²⁷ Again this confuses a difference of contracts, because the lender has no claim to the property the borrower uses. In contrast, in the *societas* the investing partner has a claim over the business and its assets that the merchant uses.

In total, C&M, rather than Aquinas, is confused. C&M provides superficial objections that reduce to empty rhetoric. It then proceeds to follow Noonan who is demonstrably unreliable as a commentator on Aquinas. Taken together it is a tragic misrepresentation of Aquinas' arguments.

A Brief History Lesson

After the review of Aquinas, C&M takes on the task of reviewing the history of the usury doctrine and its development. It makes the audacious claim that "[f]rom the thirteenth through the sixteenth centuries, scholastic theologians began developing the Church's teaching on usury." This is quite the claim because the Magisterium and not theologians develop the Church's doctrine. In fact part of Noonan's study shows the manner in which the late Scholastics evaded, down played or undermined Papal teaching on the topic.²⁸ They replaced the Magisterial doctrine with their own.

C&M goes on to look at the issue of *lucrum cessans* briefly. It notes the argument of Hostiensis as cited by Noonan. In his argument, he suggests that when a merchant pulls money out of his business to grant a needy person a *mutuum* he suffers some loss that entitles the lender to some compensation. C&M sees this as a recognition of the concept of "opportunity cost." C&M considers this a "significant breach" in the usury

prohibition.²⁹ This only demonstrates C&M lack of awareness of the history of the topic.

C&M appears wholly unaware of the theory of extrinsic titles, though this plays out prominently in Noonan's work. The theory goes that usury is profit from a *mutuum* itself or intrinsically. However, there may be extrinsic reasons or titles that entitle the lender to some compensation. Aquinas notes that a separate contract parallel to the *mutuum* may be entered to cover a loss suffered by the lender, such as procuring the money or writing the contract.³⁰ From this insight much of the rest of the extrinsic titles grew. Hostiensis is one such example of arguing that the merchant has an extrinsic title from the *mutuum* in virtue of the money pulled from his business. To call this a "significant breach" is a grave distortion. The Scholastics theory was always couched in terms that did not undermine the usury prohibition. That said progressive Scholastics ended up attempting to justify manifestly usurious titles, but that is a tale for a different article.

C&M goes on to complain about late fees sometimes attached to *mutuum*. The theologians held to a title called *poena conventalis*. According to this title, if the borrower pays late, then the lender is entitled to some compensation. Aquinas approves of this title in the *De Malo* because the lender incurs some loss.³¹ C&M objects "if being deprived of one's money for a period of time is just grounds for charging a late fee why may it not also be just grounds for charging interest? After all, the lender is without the use of his money for the entire life of the loan, not just for the duration of time in which payment was late."³²

The objection simply begs the question in favor of the lender. The issue is that the lender is not "without the use of *his* money." He has rather granted the money to the borrower, so he has no longer a claim to it. A claim to the use of his money is precisely what Aquinas argues does not exist in the *mutuum* and consequently for which the lender cannot charge. In contrast, in the late fee, the lender is entitled to his money. If he does not receive it through fraud or negligence, then he has a just title to some late fee.

C&M then proceeds to consider attempts to further liberalize the usury doctrine, considering several different of the Late Scholastics. He considers the argument of Juan de Medina in favor of the extrinsic title *periculum sortis*. The argument that he gives, as C&M cites from Murray Rothbard, is that if the *mutuum* can be guaranteed by a third party for a price, then shouldn't the lender be able to self-insure and receive that price.

The key here again is to recognize a difference in contract. If the contract is guaranteed for a price, namely the borrower must pay for that guarantee, then to be licit it wouldn't be a *mutuum*. As we noted above the *mutuum* was secured or guaranteed by the promise of the borrower. In the case here mentioned, where the contract is guaranteed by a third party, we are not longer talking about a *mutuum*. The lender isn't receiving the promise of the borrower for return come what may, but the principal is guaranteed by something else. This sort of agreement is not a *mutuum*. Consequently, Medina's argument is non sequitur, because it deals with a different contract.

A further issue is that it makes a mistake about the nature of insurance. For the contract to be just, the insurance portion would need to be secured by real property. This is actually what happens in insurance, because the insured receives a claim against the assets of the company for benefits under some contingent circumstances. The notion of self-insurance in the manner that would be relevant to Medina's proposal would imply that the lender would be selling to himself claims to his own

property, which is nonsense. Thus, the sense in which the lender might insure the risk of default fails to establish a just extrinsic title.

Next C&M points to Leonard Lessius. Lessius was certainly a progressive of his time with respect to usury. He argues that if the lender suffers some loss, because he does not have the money he granted to the borrower, he may seek compensation. The lender does not enjoy the liquidity he would have otherwise had he not lent the money. However, it is simply unjust to require that the borrower return not only the principal, but also protect the lender's financial well-being come what may.

The Grand Inquisitor Inquires

Before moving on to his defense of time preference, C&M makes a brief and dangerous comment about the Holy Office. It follows the Catholic Encyclopedia's assertion that Church approves of the taking of moderate interest and that "[t]his demand [for interest] is never unjust."³³ In favor of this they cite replies from the Sacred Penitentiary and the Holy Office since 1830. With such a startling shift in doctrine maintained for many hundreds of years, certainly one would want to carefully examine such replies. Let us do so.

The replies that we shall consider come from Denzinger's *Sources of Catholic Dogma*. Let us begin by looking at the question posed by the Bishop of Rheims:

1609 The Bishop of Rheims in France explains that. . . , the confessors of his diocese do not hold the same opinion concerning the profit received from money given as a loan [mutuo] to business men, in order that they may be enriched thereby. There is bitter dispute over the meaning of the Encyclical Letter, "Vix pervenit" [see n. 1475ff.]. On both sides arguments are produced to defend the opinion each one has embraced, either favorable to such profit or against it. Thence come quarrels, dissensions, denial of the sacraments to many business men engaging in that method of making money, and countless damage to souls. To meet this harm to souls, some confessors think they can hold a middle course between both opinions. If anyone consults them about gain of this sort, they try to dissuade him from it. If the penitent perseveres in his plan of giving money as a loan [mutuo] to business men, and objects that an opinion favorable to such a loan [mutuo] has many patrons, and moreover, has not been condemned by the Holy See, although more than once consulted about it, then these confessors demand that the penitent promise to conform in filial obedience to the judgment of the Holy Pontiff whatever it may be, if he should intervene; and having obtained this promise, they do not deny them absolution, although they believe an opinion contrary to such a loan is more probable. If a penitent does not confess the gain from money given as a loan [mutuo], and appears to be in good faith, these confessors, even if they know from other sources that gain of this sort has been taken by him and is even now being taken they absolve him, making no interrogation about the matter, because they fear that the penitent, being advised to make restitution or to refrain from such profit, will refuse.

1610 Therefore the said Bishop of Rheims inquires:

- 1. Whether he can approve the method of acting on the part of these latter confessors.*

2. *Whether he could encourage other more rigid confessors who come to consult him to follow the plan of action of those others until the Holy See brings out an express opinion on this question.*³⁴

The most important aspect to note about this question is that it has nothing at all to do with the nature of usury. The bishop is not asking the Holy See to decide on the matter of usury, but on the matter of whether absolution can be granted to usurers. Moreover, somewhat dishonestly or neglectfully the question claim that the Holy See has never condemned *mutuum* for profit granted to businessmen, which is in fact condemned in *Vix Pervenit*. In the end, the question is of a pastoral nature about whether manifest usurers should be absolved and not told about the evil of their usury for fear that they would not repent.

To this the laconic response is given:

Pius VIII responded:

To 1: They are not to be disturbed. To II: Provided for in the first.

This essentially confirms the pastoral practice proposed by the bishop of Rheims. It has no doctrinal content and in no way whatsoever approves of interest on *mutuum* contracts.

Next, we have two more questions submitted by the bishops of Viviers and Nicea:

1611 A. *To the doubts of the Bishop of Viviers: **

1 *“Whether the aforesaid judgment of the Most Holy Pontiff must be understood as its words sound, and aside from the title of the law of the prince, about which the Most Eminent Cardinals speak in these responses, so that it is just a matter of a loan [mutuo] made to business men.*

2. *“Or whether the title from the law of the prince, about which the Eminent Cardinals speak, must be so understood that it is enough that the law of the prince declares that it is licit for anyone to agree about a gain made from a loan only, as happens in the civil code of the Franks, without saying that it (law of the prince) grants the right to receive such gain.”*

The Congregation of the Holy Office responded August 31, 1831: This has been taken care of in the decree of Wednesday, August 18, 1830, and let the decrees be given.

1612 B. *To the doubt of the Bishop of Nicea:*

“Whether penitents, who have taken a moderate gain from a loan [mutuo] only, under title of the law, in doubtful or bad faith, can be sacramentally absolved without the imposition of the burden of restitution, provided they are sincerely sorry for the sin committed because of doubtful or bad faith, and are ready in filial obedience to observe the commands of the Holy See.”

The Congregation of the Holy Office responded Jan. 17, 1838:

*Yes, provided they are ready to observe the commands of the Holy See. . .*³⁵

Here we see the “interest permitted by law” cited by the Catholic Encyclopedia article. Again nothing new is added here as concerns doctrine. The Holy Office does not approve of the law of the prince, but only confirms the pastoral practice of absolving manifest usurers even if they claimed the title of the law in bad faith. Such decisions, while manifestly scandalous, destructive to the Faith and devotion to the Sacraments, are nonetheless concerned with pastoral practice rather than doctrine. Hence, it appears that the Catholic Encyclopedia article is in error.

Preferring Time to Doctrine

After the brief reference to the Holy Office, C&M goes on to discuss the theory of time preference. He suggests that this fundamental principle has been missing from debates on usury. Consequently, once we understand time preference, we can understand that it “provides the origin and justification for the payment of interest.”³⁶ However, C&M arguments fail to live up to this claim.

The first example concerns how we’d be able to determine the value of land. Without the notion of time preference and consequently discounting, the value of land would go up to infinity. This is because the land over time could produce a great deal things. Without time preference, we’d purportedly simply have to sum the value of all of the potential output. This is obviously false. In contrast, time preference shows a way of determining the value of the land that understand that output produced sooner is more valuable then output produced later.

A second example is a factory deciding how to generate output. A factory could generate more output by using processes that are more time-consuming. However, again companies do not behave this way because they know that it is more valuable to have a certain amount of goods sooner than more later.

These two examples are convincing as far as they go. However, they fail in one important respect. They demonstrate how to value a good, rather than justify a charge. The justification of the price paid is because of the good itself and time preference is a method of determining how much that price should be or at least how much we would want it to be. For example, the time preference of a thief does not *justify* charging for his stolen goods. Rather, no charge whatsoever is justified, because it is ownership of the good that first establishes that any amount at all can be charged. As we saw in the *mutuum* the lender doesn’t own any property in the agreement and so no charge is justified even if by time preference he judges he wants more.

C&M continues with his discussion of time preference by addressing interest directly. Here it claims that not only that the lender *may* take interest, but that it would be *unjust* for him not to be paid interest. He concludes this by insisting that it is unjust to deny the interest charge, because it forces the lender to treat two different economic goods, as if they were the same.³⁷ However, the sense in which these goods are the same only begs the question. That the economic actor wants the present and future goods to be different in terms of time preference fails to demonstrate that they ought to be. No one questions that the lender wants more in return than what he gave, but it has not been established that he is in fact *owed* more. This indeed follows upon the above examples that failed to show that the price is *justified* by time preference. The follow up objection to this might be that if time preference is so ignored and does not justify some interest, then no one would lend. This is true as far as it goes, because

the *mutuum* contract is essentially a gratuitous contract, i.e. it is an act of charity. Certainly people will engage in this gratuitous contracts, but not for economic reasons. That is indeed the nature of the contract.

However, even if all of this argumentation is not convincing, then consider the following. Innocent XI condemned the following proposition as at least scandalous and pernicious in practice: "Since ready cash is more valuable than that to be paid, and since there is no one who does not consider ready cash of greater worth than future cash, a creditor can demand something beyond the principal from the borrower, and for this reason be excused from usury."³⁸ Thus, time preference as an excuse for usury is explicitly condemned by the Magisterium.

Moreover, consider the extent of C&M claim regarding time preference. It is a universal phenomenon present no less in the early Church than today. Men even then preferred to have their money and goods sooner rather than later. However, the Church clearly and explicitly condemned usury that whole time. Yet, according to C&M it is positively unjust for the lender not to receive interest on his loans. Not only was the Magisterium, including the Scriptures and Fathers, promoting a grave evil for millennia, but they positively err in their teaching on usury. Such a position is irreconcilable with the Catholic Faith.

A Hypothetical Magisterium

C&M however cannot be unaware of the problem of reconciling this position with the Catholic Magisterium. At the end of his lengthy discussion of Hilliare Belloc, he cites Pope Benedict XIV's encyclical, *Vix Pervenit*, against Belloc.³⁹ In that document, the pope condemns the notion that usury can be excused because the funds granted are used in a productive manner. Thus, Belloc's notion of charging interest on a productive loan is rejected. The Catholic Magisterium is in fact more restrictive than Belloc would have it.

However, no less is C&M's position condemned. When Benedict defines the sin of usury, he notes that the contract of its nature demands equality. Any profit or gain over the amount given is usury and evil. However, this is exactly what C&M contends is not only permissible but demanded by justice under the auspices of time preference. If Belloc is wrong for allowing usury in "productive loans," then a fortiori is C&M wrong for allowing it generally.

Without citing any Magisterial documents to the effect, C&M goes on to claim that the "development of the teaching on usury has been so dramatic over the centuries that it inevitably prompts the question: has the Magisterium taught error anywhere along the way?"⁴⁰ At this point, C&M has referenced two Magisterial statements. The first was the replies from the Holy Office of the 1830's. As we saw, these had no doctrinal content and were pastoral in nature. The second was *Vix Pervenit* which reaffirmed the traditional doctrine that usury is any profit on a *mutuum* contract and is intrinsically evil. Thus, it is unclear what *Magisterial*⁴¹ development that C&M is referring to. In order to settle this putative issue, C&M makes some unsettling suggestions. First, he quotes the Catholic Encyclopedia's assertion that the change is due to economic circumstance. The rise of modern capitalistic systems have given money a certain value because it can be invested. This allows interest to be demanded on loans and usury to become a none issue.

The article's assertion is certainly contrary to facts. The existence of *societas* and other contracts for profit have existed since at least Roman times. Aquinas certainly recognizes in his Commentary on the Sentences that money can be wisely put to good use and a profit made.⁴² However, more importantly and as noted before, usury is not about the nature of money. The purported change in money is simply a distraction, when usury is about the nature of the *mutuum* contract as clearly taught by *Vix Pervenit*.

C&M goes on to quote an even more disturbing proposition from Patrick O'Neil. He suggests that the economic judgements of the Church were based upon certain economic assumptions. Hence, the condemnation of usury can be thought of as "If A, B and C, then usury is evil under conditions D." He and C&M are not denying the consistent teaching of the Catholic Church, they are simply recognizing that the antecedent no longer holds true and therefore the consequent is not necessary. Thus, a Catholic can hold in good conscience that the taking of interest on *mutuum* contracts is not evil.

The problematic should be obvious. The condemnations of usury are never set forth in hypothetical terms. They are in fact categorical. Hence, O'Neil must inject into the Catholic Magisterium implicit assumptions never recognized before by the Magisterium Herself. This suggestion is troubling because if true, it undermines the entire Magisterium. If there can be implicit assumptions behind explicit categorical teaching, then there is no reason to believe any teaching is now true. *Humanae Vitae* and the First Vatican Council are no more safe from this than *Vix Pervenit* and the Council of Vienna.

Thus we find where the denial of the usury doctrine leads us. We must abandon the Catholic Magisterium, reject the Scriptures and Fathers, and stand rather upon the shoulders of economists who end up being more Catholic than the Supreme Pontiff. Is not rather this the state of the post-conciliar Church about which traditionalists, such as Woods, complain. The alternative is that the usury doctrine is true and the gates of hell have not prevailed, but rather that the economists have made some errors. They have overgeneralized, dealt with abstractions rather than reality, embraced the subjective over and against the objective. We see precisely this in the treatment of time preference.

Conclusions

C&M has received a great deal of criticism. Here I have laid out the case against that work on the topic of usury, thus justifying at least some of that criticism. As we've seen C&M fails to grasp the Catholic doctrine of usury. It fails to comprehend Aquinas' arguments, settling rather for mere rhetorical questions and another's incompetent commentary. It argues for time preference as an excuse for usury that has been explicitly rejected by the Magisterium and in such a way that it fails to achieve its end. Finally, all the bothersome Magisterial teaching is neatly set aside in favor of a hypothetical Magisterium that undermines the Catholic Faith.

In the end, C&M is wrong to attempt to loose the consciences. Rather it is Peter who can loose and bind and he has bound us to the Catholic – not Austrian – doctrine of usury.

- ¹ Robert P. Maloney, "The Teaching of the Fathers on Usury: An Historical Study on the Development of Christian Thinking," *Vigiliae Christianae* vol 27, 241-265.
- ² Thomas Woods, *The Church and the Market: A Catholic Defense of the Free Economy*, 109.
- ³ Maloney, 245.
- ⁴ Ibid. 243.
- ⁵ Ibid. 242.
- ⁶ All quotes were taken from the Douay-Rheims translation of the Bible here: <http://www.drbo.org/index.htm>
- ⁷ ST II-II, q. 78, a. 1, ad. 2.
- ⁸ Maloney, 254. St. Ambrose, De Tobia 15.54.
- ⁹ Maloney, 259.
- ¹⁰ Ibid. 251.
- ¹¹ Ibid. 259
- ¹² Ibid. 264.
- ¹³ Ibid. 248.
- ¹⁴ Ibid. 250.
- ¹⁵ St Augustine, Epistle 153 to Macedonius. Original Latin found here: http://www.augustinus.it/latino/lettere/lettera_154_testo.htm. An English translations here: <https://archive.org/details/usuryfundsbanksa00ocaluoft/page/90>
- ¹⁶ Maloney, 259
- ¹⁷ Billiuart, Charles Rene, Summa Sancti Thomae: Hodiernis Academiarum Acommodata, 460-461. <https://archive.org/details/summasanctithoma04bill/>
- ¹⁸ St. Pope John Paul II, *Veritatis Splendor* n. 78 explains: "The morality of the human act depends primarily and fundamentally on the 'object' rationally chosen by the deliberate will..." He goes on to note this object is "specific kinds of behavior." Thus mere consent to a contract is insufficient if the contract qua kind of behavior is evil.
- ¹⁹ John T. Noonan, Jr., *The Scholastic Analysis of Usury*, 55.
- ²⁰ Noonan 143-145
- ²¹ ST II-II, q. 78, a. 2, ad. 5.
- ²² ST II-II, q. 78, a. 1, ad. 6.
- ²³ Noonan, 56.
- ²⁴ De Malo q. 13, a. 4, ad. 15.
- ²⁵ Herbert Johnston, "On The Meaning of 'Consumed in Use' In the Problem of Usury", *The Modern Schoolman* Vol 20, no. 2, 93ff. Johnston recognizes that it is the nature of the contract rather than the property that determines whether something is treated or "actually" fungible in the relevant sense.
- ²⁶ Woods, 112.
- ²⁷ In Sent lib. 3, d. 17, q. 1, a. 6, ad. 5
- ²⁸ John T. Noonan, "Usury: The Amendment of Papal Teaching by Theologians" in *Change in Official Catholic Moral Teaching*, 80ff.
- ²⁹ Woods, 113.
- ³⁰ ST II-II, q. 78, a. 2, ad. 1.
- ³¹ De Malo q. 13, a. 4, ad 14.
- ³² Woods, 113.
- ³³ Woods, 115.
- ³⁴ Denzinger, 1609 and 1610, <http://patristica.net/denzinger/>
- ³⁵ Ibid., 1611 and 1612
- ³⁶ Woods, 115.
- ³⁷ Woods, 116.
- ³⁸ Denzinger, 1191

³⁹ Woods, 120n91.

⁴⁰ Woods, 121.

⁴¹ As noted before, Woods talks about the doctrine being “developed” by the Scholastics. These progressive treatments, some of which undermine the Catholic Magisterium, were never confirmed by the Magisterium and thus do not constitute the doctrine of the Church. This is all the more true when Magisterial statements contradict and repudiate those theologians.

⁴² In Sent IV L. 3, D. 37, A. 6, ad. 4

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Does the Modern CCC Define Usury?

Posted on [September 21, 2020](#)

No.

Usury is referenced twice in the modern Catechism of the Catholic Church. The first instance concerns the Fifth commandment on murder and proceeds:

2269...*The acceptance by human society of murderous famines, without efforts to remedy them, is a scandalous injustice and a grave offense. Those whose usurious and avaricious dealings lead to the hunger and death of their brethren in the human family indirectly commit homicide, which is imputable to them.*⁷¹

2269...*A societate humana condiciones famis tolerari, quae mortem afferunt, quin nisus fiat ut eisdem remedium afferatur, scandalosa est iniustitia et gravis culpa. Negotiatores, quorum usurarii et mercatorii usus, suorum in humanitate fratrum famem et mortem provocant, indirecte committunt homicidium. Hoc illis est imputabile.*¹⁸⁰

Nowhere do we see a definition of usury. Usurious deals are referred because they indirectly cause murder because they lead to hunger and death.

The second passage in the context of the Seventh commandment on stealing and under the subsection of love of the poor. It reads as follows:

2449 *Beginning with the Old Testament, all kinds of juridical measures (the jubilee year of forgiveness of debts, prohibition of loans at interest and the keeping of collateral, the obligation to tithe, the daily payment of the day-laborer, the right to glean vines and fields) answer the exhortation of Deuteronomy: “For the poor will never cease out of the land; therefore I command you, ‘You shall open wide your hand to your brother, to the needy and to the poor in the land.’”²⁴⁹ Jesus makes these words his own: “The poor you always have with you, but you do not always have me.”²⁵⁰ In so doing he does not soften the vehemence of former oracles against “buying the poor for silver and the needy for a pair of sandals . . .,” but invites us to recognize his own presence in the poor who are his brethren.*²⁵¹

2449 *Inde a Vetere Testamento, iuridicae omnis generis ordinationes (annus remissionis, prohibitio fenerandi et retinendi pignus, obligatio decimam dandi, quotidiana solutio stipendii mercenario, ius racemationis et spicilegii) adhortationi respondent Deuteronomii: « Non deerunt pauperes in terra habitationis tuae; idcirco ego praecipio tibi, ut aperias manum fratri tuo egeno et pauperi, qui tecum versatur in terra tua » (Dt 15,11). Iesus hoc verbum facit Suum: « Pauperes enim semper habetis vobiscum, me autem non semper habetis » (Io 12,8). Ipse vehementiam veterum oraculorum non*

*ideo reddit caducam: « ut possideamus in argento egenos et pauperem pro calceamentis [...] vendamus...? » (Am 8,6), sed nos invitat ad Eius praesentiam agnoscendam in pauperibus qui Eius sunt fratres:*³⁴⁵

“Fenderandi” here translated as “loans at interest” can be also translated as “taking usury.” However, this passage does not tell us in what “fenderandi” or the “loans” and “lending” consist. No definition is given.

From these passages it is not even clear that the Catechism teaches that usury is intrinsically evil or evil at all. The first passage only reprobates “usurious dealings” that cause hunger and death of the poor. The second passage only discusses the prohibition of lending at interest as a juridical measure for the love of the poor, rather than something contrary to natural law.

Therefore, the Catechism does not provide a definition of usury, let alone one that could be describe as [interest on loans generally](#). Moreover, it does not teach the perennial doctrine of [usury as profit on a mutuum which as a species of sin is intrinsically evil](#)

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DeCock, Lessius and Usury

Posted on [September 2, 2020](#)

Recently I read a paper, “Spanish Scholastics on Money and Credit,” written by Wim DeCock. [1] The paper I have access to is a “Uncorrected Proof” but I assume that it is not substantially different from the final version. It included a section title “Leonardius Lessius and the Debt Market.” After reading it, I wanted to address some of the errors made by Lessius.

The first thing to note is that we are discussing “letters obligatory”[1] as translated by DeCock. He gives no real indication of the nature of these contracts, so on that score we cannot be certain if they are mutua or not. However, for the purpose of this analysis we will discuss the contracts as if they were and proceed with the potential problems.

DeCock notes that Scholastics had defended already the cambium and the census contracts. These were by and large approved the great majority of theologians and were not seen as problematic.[2] They were analyzed on the basis that these contracts were a sale of a right or claim to money rather than money itself, the later being problematic from a usury perspective. Thus, in this respect they avoided the problem of usury.

Now to characterize usury as a problem of the sale of money is to misconstrue the problem, indeed, because the mutuum is itself not a sale at all but a contract of a different nature. With some qualifications one may speak about it as a sale of money, but this produces more confusion than it resolves. It is better to simply start with the mutuum as such and proceed with the analysis.

The notion of selling a claim to future money is somewhat dangerous and confused. The notion taken as such is flatly false. The reason is that future money does not exist and so a claim to future money is a claim to nothing at all. To put it differently, this

future money must come from somewhere, because it is otherwise a free floating abstraction. Now, Juan De Lugo analyzed the census, for example, not as a claim to future money simply. Rather he saw it as a partial usufruct bought and sold back to the seller. [4] On this basis one could charge a rent and receive some income. The claim to future money is grounded in a claim against real property bought and rent.

In the case of a mutuum, this could be characterized as a “sale of a right to future money.” The lender does indeed have a claim to repayment at some future point. However, he doesn’t have any basis to charge more than what he gave. His claim is limited to that amount. To charge more it so charge for something he doesn’t have, namely any further property claim. If the letters obligatory were in fact mutua they could not escape this problem. They would first need to be grounded in some real property.

Another part of Lessius’ attempt to evade usury is in what DeCock refers to as the “logic of the market” over the “doctrine of usury.” [5] Lessius claims that “absent money is worth less than present money.” In this case, Lessius is speaking about bills of exchange where money would be exchanged here for a foreign currency in some other place. Thus he remarks that the money in the other place is worth less because it provides fewer opportunities as currently absent and there are costs associated with making present for use. However, in this case, we are talking about property that is really existing but simply physically absent. Over this one can have a property claim and as such we are not talking about a mutua.

However, DeCock references this in the context of Lessius’ discussion of debt markets and bonds. In the case of the bonds, they are discounted such that I might borrow 95 dollars in the bond, but return you 100 dollars. Now the only existing but possibly physically absent money here are the 95 dollars received by the borrower. If they are physically absent, then by Lessius’ logic the borrower should pay less, because he receives something worth less than what he must return. This of course does not make any sense and a broader reading of Lessius would probably reveal he is not talking about “physically” absent money at this point.

What Lessius is probably talking about in a bond is money that is temporally absent. In this case, the logic of the bills of exchange fails, because the money doesn’t exist. The lender doesn’t have a claim to anything that really exists other than the promise of the borrower for a return. He cannot value this, because it doesn’t exist; it has no value at all. So to say that temporally absent money is worth less is mistaken, because it is worthless because it is not. What the lender does have a claim to is a return of the amount he gave and not more. It is also worth noting that this was condemned by Innocent XI in 1679, [6] but at least a few decades after Lessius. [7]

Finally, Lessius address the extrinsic title of *periculum sortis*. [8] *Periculum sortis* was the proposed title that suggested that a lender could claim some compensation in a mutuum in virtue of the risk of default. In this Lessius proposes that anyone can make use of this title because it is based on the common estimation of the market. This is in spite of the fact that a particular individual may be especially protected from default due to a special relationship, for example.

Here Lessius confuses valuation of a title with the presence of the title itself. It may be true that a title has a certain value in the market, but one must actually possess that title in order to charge for it. If I don't actually own some property, then the mere fact that the title of ownership to it has a price does not grant me a claim to charge for it. I must in fact have the title in order to charge for it. [9] Thus Lessius here excuses usury for at least some, though we ought not to accept *periculum sortis* as an excuse for usury in any case.

In sum, Lessius was apparently a progressive theologian concerning the usury doctrine. He errs in significant ways that undermine the usury doctrine through economic anti-realism. However, a consideration of the reality of finance and property claims can easily dispel these errors.

[1]
See https://www.academia.edu/31452427/Spanish_Scholastics_on_Money_and_Credit

[2] Page 279

[3] Page 279

[4] See John T. Noonan, *Scholastic Analysis of Usury*, 242.

[5] Page 280

[6] See <https://lendhopingnothing.wordpress.com/innocent-xi-various-errors-on-moral-subjects-1679/>. Condemned proposition: "Since ready cash is more valuable than that to be paid, and since there is no one who does not consider ready cash of greater worth than future cash, a creditor can demand something beyond the principal from the borrower, and for this reason be excused from usury."

[7] See https://en.wikipedia.org/wiki/Leonardus_Lessius

[8] Page 281

[9] This is sadly a common mode of thinking in modern finance. The notions of opportunity cost and risk premium are taken as justifications for a charge rather than means of valuation of a charge. Consequently, there is all sorts of confusion about why a charge is made in a lease or insurance. For example, the charge on a lease is spoken of not because of the title to the use I sell but rather because of the absence of my opportunity to use it. In insurance we talk about the transfer of risk as justifying a charge, rather than selling a security title to some real property.

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Research Notes – Helmholtz “Usury and the Medieval Church Courts” (1986)

Helmholz provides some interesting details about usury charges in medieval England.

1. English Background

- A. The medieval held significant juridical sway in medieval England. "The medieval church claimed exclusive jurisdiction to determine what amounted to usury. The church did not, however, claim exclusive jurisdiction to *punish* proven usurers. At least some canonists allowed secular courts to undertake prosecution and enforcement of the law against usury, provided that enforcement followed the church's definition, and provided also that cases of doubt about the usurious nature of any specific transaction would be referred to a church court." (365)
- B. Usury was defined as "whatsoever is taken for a loan beyond the principal." Helmholz cites Gratian decretals: "Ecce evidenter ostenditur, quod quicquid ultra sortem exigitur usura est." (365n8) It's worth noting that this definition doesn't use any term that could be translated as "loan." A more literal translation would be "whatsoever is taken beyond the principal."
- C. It was recognized that usury only took place in a *mutuum*. However, even contracts that were not formally *mutua* could still fall afoul of the usury laws as a "cloak for usury." (366)

2. Extent of Enforcement

- A. Helmholz notes the limited information that is available
- B. Most cases were with regard to "manifest" usurers. This did not mean that they were obviously usurers, but the public character of their usury. (368)
- C. The typical number of cases in diocesan courts were usually two to three per year. (368)
- D. From the limited data we cannot draw conclusions to the prevalence of usury. Other minor courts could also hear cases regarding usury such as manor courts. (369)

3. Nature of Cases

- A. Helmholz considers only specifically a couple of cases. One case there is a cloaked usury under a contract of sale. Some grain is sold in August for 25s. which is then resold back for 40s. This was considered "in fraudem usurasrum." (371)
- B. Another case regards a loan and a sale of land. The land owner grants the borrower a loan of "six marks" to purchase the land from him. The land owner retained the title to the land until the loan was repaid. In the meantime, the land owner charged rent of 6s. 8d and the borrower enjoyed the fruits of the land. This "rent" was considered potentially usurious. The case was resolved as not constituting usury as long as the land owner swore an oath that he did not mean to commit usury. (372) **[It is not clear where exactly the loan went if the title was not transferred. I mean that the borrower didn't purchase the land with the loan. In fact, it does not come to him until he actually pays the six marks. It's not clear why a loan would be involved in the first place, when the borrower could just rent the land along with a claim to purchase it wholly in a year. It sounds like the strange sort of thing that happens in real life.]**

- C. A final example is a case where a lender received a silver spoon along with the return of the principal. The defense was that the spoon was a gift and had nothing to do with the loan. The conclusion was not recorded. (373)
- D. Moreover, it looks like actual enforcement only involved “immoderate” usury. Practically it would be difficult to enforce taking anything on a *mutuum*. (373)
- E. Additionally, cases typically involved only small sums of money. The largest instance was for 24 pounds. The great majority of cases dealt with amounts less than 40s. (375) There may be some explanations for this. Large scale borrowers may not have wanted to undermine possible sources of capital.

The article goes beyond this to discuss procedure and the later shifts of jurisdiction. I had hoped there would have been more details about straightforward cases. The closest he comes is commenting “Simple loans of money in return for a promise to pay a greater sum...” (376) This would imply the personal guarantee notion of the *mutuum* I have argued for, but this is ambiguous and not taken from any specific case.

Overall, this is a very interesting article emphasizing the real practicalities with enforcing and judging usury cases. It does help clarify the notion of a “manifest” usurer and the real limit of at least available cases on usury.

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Sed Contra Podcast – On Usury

Posted on [October 5, 2020](#)

Recently a fellow of mine pointed me to the [Sed Contra Podcast on Usury](#). My high level impression is that they make a lot of the typical mistakes that plague discussion of the usury doctrine. However, they bring up novel point, which may be worth discussing. I’m not sure of the best way to proceed, so the below follows the course of the discussion with points from the podcast in bold and my commentary or reply following.

In Deuteronomy, God forbids the Israelites from lending to one another but permits them to lend to foreigners. This seems to be a matter of Divine positive law rather than natural law.

This passages has several interpretations. One of the most common, of which Aquinas also accepts (ST II-II, q. 78, a. 1, ad. 2), is that usury was permitted against foreigners not because it was licit but because of the hardness of hearts of the Israelites and to prevent greater evils.

St. Jerome sees this as the first stage in the Divine pedagogy. At first God permits usury against foreigners only, but the Prophet Ezechiel forbids it completely. Finally, Jesus brings this to perfection by forbidding even the hope of return. (See Robert Maloney, “The Teaching of the Fathers on Usury”)

Reading the Old Testament from the hermeneutic of the Fathers would appear that usury is contrary to the natural law and not simply Divine positive law.

Jesus says to “Lend hoping nothing back.” This was read as against usury.

This was not only read by Councils as against usury, but also several of the Father used this passage in the context of their condemnations of usury.

Jesus in the Parable of the Talents appears to be hold up interest or usury as something positive.

This passage has been treated as not affirming usury as positive or allowable. The [commentaries](#) of Lapide and Haydock both read this as either metaphorical or condemning avaricious men.

Roman Law forbid the exaction of usury on specifically a *mutuum* contract. Such a contract involves a transfer of ownership. One could not charge more because the property has entirely transferred to the borrower.

This requires some qualification. The Romans, at least in the Institutes of Justinian, recognized that one could not create a usufruct on things “consumed in use” which are the object of the *mutuum*. In this sense, the *mutuum* was essentially gratuitous because you could not charge a rent for the use of things “consumed in use.” This to some extent forms the basis of Aquinas’ argument in the Summa Theologica.

However, they permitted the creation of a “quasi-usufruct” and allowed that a contract of *stipulatio* could be added to the *mutuum* which allowed for one to receive usury. While the Roman recognized that no usury could be justified by the contract itself, they still allowed exaction of usury in any case.

I can loan a car or money, but what is the difference? The Romans had the notion of “consumed in use.” A car or house can be rented because it can be used without consuming it, but money when used is “gone.”

The relevant notion here is the difference in contract. Something loaned in a *locatio* is granted with use only and can be charged for. Something loaned in a *mutuum* is granted ownership entirely and admits no charge. Part of the problem is the manner in which the English “loan” conflates different kinds of agreements.

It is note worthy that Aquinas recognizes that money can be loaned under either contract. The usual *mutuum* is a loan of money, but there can also be a *locatio* of money where it is used *ad pompam* or for display (ST II-II, q. 78, a. 1, ad. 6). The difference is in the contract, not in the kind of object. Aquinas notices that things have more than one use, some of which are consumptive and others which are not. Since the object is indifferent to the use we make of it, the contract itself normatively determines which uses are authorized. Aquinas makes this very explicit when he acknowledges that a pair of shoes, of which the normal use is wearing and could be rented, could nevertheless be the object of a usurious *mutuum* contract (De Malo q. 13, a. 4, ad. 15).

Can I buy money? If we consider money as broadly as possible, then we can say that I buy bread with currency, when both are “money.”

The relevant question is whether one could sell things of the same kind. The specific loan we are talking about is a *mutuum* which is a grant of some goods to be returned in kind at a latter date. In this sense, no one would exchange the same kind of property one for the other, because each already has that kind of property and there is no benefit from the exchange.

Would you ever rent wine?

This is exactly the example that Aquinas makes use of and is very well articulated.

What about money? If I loan money to you I lose a bit of security. Shouldn't I be able to charge for this?

This is not substantively different from the wine example. When I have a bottle of wine I have some security in having the liquid. If I have no other liquid to drink then at least I have that. It could in fact save my life. However, in the case of usury this is not a relevant concern.

The wine grants you security against extrinsic circumstances. However, the borrower should not be responsible for covering you if things go south because you unwisely handed over your wine to him. He should not be responsible for returning the wine as well as your well-being and at his cost. This sort of situation is rejected by Aquinas (De Malo q. 13, a. 4, ad. 14).

Zippy holds that usury is interest on a loan where the lender has ultimate recourse to the borrower in the case of default. This amounts to charging for what does not exist or to enslavement of the person, since it is a claim against his person or his labor.

This seems to follow Zippy's "[Simply usury test.](#)" I think it is clearer to say that you are renting the person, rather than simply that you have a claim against him, because even in a licit *mutuum* you have a claim against him. The issue with usury is that you are nevertheless treating as if he were rentable property.

Granting an advance on the building of a custom product, you are paying for something that doesn't exist. You have a claim against the person of the laborer.

We must clarify that the problem with usury is not a claim, taken generally, against a person. The *mutuum* itself resolves to a claim against a person, namely that he personally return the principal. The problem with usury is treating a person as property, namely renting his person.

In the second place, the advance or deposit is not a sale. This is seen in the fact that the agreement is not terminated until later. In fact it is a sort of loan, because something is given to be repaid later. Because the return is made, not in kind, but in something else, namely the product, the equality demanded in a *mutuum* is not immediately apparent. In the end, he must make good on the return. If after granting him the money, you demand not only the agreed product but another because of the advance, this second would be usurious.

A wage contract is a contract for time and labor of the person. No one believes this slavery.

This continues the mistaken opinion that the problem of the ambiguity of a "claim" against a person. Slavery treats the person as property, as does usury. The specific claim is a property claim. A contract for labor is not of this kind.

Can you charge for time?

I take this out of context from the discussion of wage contracts, because I think it is correct if understood rightly.

Consider an exchange of a \$5 bill for \$5 worth of quarters. This is an exchange that occurs and people agree that equality is only possible if equal amount is given and taken. We may stipulate some separate fees extrinsic to the transaction, such as gathering the quarters, etc., but the transaction in itself requires \$5 be given for \$5. This is immediately true from commutative justice.

Now, consider that rather than granting the quarters immediately, they are granted in a month or a year. This is essentially a *mutuum* agreement. One party grants money to be returned in kind at a later date. What has been added to the contract? Time. However, time is not the sort of thing that can be sold or rented. Therefore, adding time to this agreement does not justify usury. Nothing else is added, therefore, usury is unjustified and therefore evil.

Consider a contract where someone is just paid to be somewhere.

In order for this to be a realistic contract, they must be there to do something. The most common example would be a guard, who does nothing but sit at the front of the door. It seems that he is simply paid for time, because he does nothing.

However, his presence does do something. His being there acts as a deterrence for others. Even if he doesn't stop any thieves, his actualizes a state of affairs that is of economic value. This is similar to the other example of someone holding a sign. He actualizes a state of affairs by his presence of being there. His labor may be minimal, but it remains valuable and this is not to charge for time, but to charge for actualizing these states of affairs.

Paying for people's time is to pay them not to do things they could do otherwise. This is false. I am not paying you not to do the universe of possible things you could do other than this thing, but I'm paying you to do this thing. I am paying you to stand and hold a sign or act as a deterrent to thieves.

You can buy what does not exist. In a wage contract you are paying for the product that the person will create.

As mentioned above, obviously you cannot buy nothing. This is not a claim of Zippy. Aquinas insists on this as manifestly contrary to natural justice (ST II-II, q. 78, a. 1, co) and it is. There is no equality between something and nothing. They are absolutely different and so to contract to pay something for nothing is manifestly contrary to justice.

The participant then shifts to speaking of potentialities, but this only begs the question. I do have a claim over you to instantiate a state of affairs, but it is that state of affairs that I am paying for. If the product is subpar or he proves to actually be incompetent, I may have recourse against him for fraud, which does occur. In the end, I am not paying for a property claim against your person, which the participant does firmly deny. The confusion still persists that we are taking about "claim" in a more general sense than is relevant to usury. In usury, the lender is not making a claim to something you make, but rather to you. He is charging rent on you as if you could be chattel.

Consider paying for nothing. I can pay for someone not to act. For example, the government subsidizes not growing a certain crop. Or, consider paying for a non-disclosure agreement.

It cannot be stressed enough that selling nothing is manifestly contrary to commutative justice. The question should be what is wrong with the principle of equality with commutative justice, rather than raising putative examples of selling nothing.

In the first example, we must understand this not as a sort of sale or hire. A subsidy in itself has the nature of a gift. This gift is attached with the stipulation that you don't grow a certain crop. This would be similar to a trust for a student where he receives the funds on the condition that he attends a certain college.

A non-disclosure agreement still involves a certain activity. You must indeed keep the thing secret for a time. This is not a nothing anymore than protecting a deposit of property is a nothing.

Part of the error lies in when the participant says “When money is given....” but not every time money is given is a sale or hire contracted.

Can’t I charge you more on the basis of inflation? It seems that you can. Money is a measure of value which changes over time. This is an equivalent amount of money.

Inflation cannot form the basis of a charge in inflation. Consider first that there is such a thing as deflation, where the value of money increases. Consequently, one would owe less in a *mutuum*. No one believes or approves of this this.

Consider also the nature of inflation. Inflation concerns the purchasing power and its diminution over time. What then is purchasing power? It is the ability to exchange one form of property for another in a market of willing participants. However, this is not something of the money itself. It is extrinsic to money and a function of the markets, because it relies on the existence of the markets, its goods and participants. You can’t sell this extrinsic relation, because you don’t have a claim to it.

Consider that in this respect the purchasing power of money depends on every other marketable good. It may take more money to receive medicine today than years ago, but you can purchase many more computers today than yesterday. Therefore, inflation is itself not an unambiguous concept, because the same thing may inflate or deflate with respect to different things.

If a person withdraws money from profitable ventures to contract a *mutuum*, then you are owed something of the investment return that you gave up.

This is the notion of opportunity cost in modern finance. The problem first is that the profits you could have made do not exist. There is no possible way that you have a claim to them and Aquinas rejects this title (ST II-II, q. 78, a. 2, ad. 1). He acknowledges that you can’t charge for what you don’t have and may be in many ways be hindered from getting. He rejects it with even more confidence in the objection rather than the reply in the De Malo. (q. 13, a. 4, obj. 14).

As we’ve noted above you can’t sell what does not exist. The profits you could have made had you acted differently is a counterfactual state of affairs. As such it is something that not only does not exist, but ipso facto will never exist. The fact is that once you have taken the money out of those investments and granted them in a *mutuum* you no longer have any even virtual or potential claim to those profits.

Benedict XIV allows for extrinsic titles. If a *mutuum* caused you to suffer a loss then you had a title to recover that loss.

This is somewhat of a misrepresentation. Benedict states “We do not deny that at times together with the loan contract certain other titles-which are not at all intrinsic to the contract-may run parallel with it.” First, his language is that he does not deny that extrinsic title exist. What we can draw from this is only that they “may” exist, not that he positively approves that they exist.

Second, Benedict says nothing about the nature of these titles with respect to suffering a loss. He simply states that “From these other titles, entirely just and legitimate reasons arise to demand something over and above the amount due on the contract.” Nowhere are the reasons enumerated or even suggested.

Aquinas allows for something over the principal on the loan in the case of a loss. It is not clear what exactly.

Aquinas is more explicit in the De Malo. He allows for something over the principal as results of a loss resulting from delay (De Malo q. 13, a. 4, ad. 14). Some use this as the key to interpreting the passage in the Summa Theologica, where he appears to admit the same but in a more ambiguous way.

The tradition held that extrinsic titles were never for the sake of profit.

This is true to my understanding and is an important point. The *mutuum* remained an act of charity regardless of if or what extrinsic titles may be claim. Thus to profit from an extrinsic title on a *mutuum* was to profit from a *mutuum*, which is evil.

Accepting this sheds light on the extrinsic titles. For *lucrum cessans* or opportunity cost, it is not plausible that you are not profiting on a *mutuum*. The lender is merely shifting the source of his profits from his investments to the *mutuum*. This is another way of looking at the problem of the counterfactuals mentioned above.

Aquinas apparently follows Aristotle by noting that the issue is that the lender gets money by money. This is combined with the insight of the Roman jurists about the transfer of ownership.

It is not clear that this is correct. For Aquinas, it is clear that the problem is with the *mutuum*. It is a mistake to think of this as a problem with respect to the nature of money. This is a way of putting it or seeing it, but the issue is with respect to property claims and contracts.

At the core of the usury doctrine is the just price.

This is a grave error. Usury involves a consideration prior to any question of just price. Indeed, the usury doctrine is consistent with any number of theories of just price. The problem with usury as Aquinas notes is that it involves selling nothing or selling the same thing twice. Both of these are unjust prior to any question of just valuation.

As noted above the problem is one of property claims. When ownership is transferred in the *mutuum* the lender has a claim to a return of the same amount in kind. He has no further claim to charge against. Aquinas states this in several places by noting that the lender does not and cannot have a *usufruct* claim. (ST II-II, q. 78, a. 1, ad.

5, [Commentary on Psalm 14 \[15\]](#)) A *usufruct* is property claim to the use of a thing along with its goods or fruits. This can be rented to another. It however cannot be charged for in the *mutuum* because it cannot exist. Hence, prior to any consideration of just price, the property claim to ground any price at all is not present and therefore usury is logically prior to and independent of any just price theory.

We have divorced money from real things. We are buying and selling probabilities and opportunities.

This is an important insight. However, it arises from financial ignorance or error rather than what actually happens. For example, in an insurance contract, we often talk about buying and selling “risk” as if this was a reasonable way of speaking. However, in reality, you are paying for a security claim against the balance sheet of a company and its real assets.

We expect that money has a intrinsic fecundity of itself. We expect that a retirement account will increase regardless.

This is again an important insight. I would argue that this is a result of usury. In usury the usurer simply makes money without labor, risk or expense. This sort of financial irreality provides a dangerous way of thinking about money and economics.

What is ticking behind all of Aquinas is that money is not productive.

As already mentioned, in a sense this is false. Aquinas explicitly notes in different places how you can charge for money. He gives the example of money rented for display, but also money rented for security. The example he gives is of money held in a purse as security (De Malo q. 13, a. 4, ad. 15). Money is just sitting there unproductive, but it still demands a charge. The reason is that the person is paying for a claim against the money to make use of it under certain circumstances.

This error of focusing on the nature of money rather than the nature of the contract is perhaps the most pervasive error in the understanding of usury. Moreover, a reading of the objections, as the participants suggests, would not indicate the problem is in money but in the contract and the way property claims are thus structured. This is all the more reinforced by reading the objections of the De Malo.

Aquinas notes that in the *mutuum* risk is transferred to the borrower, but in other circumstances where profit is allowed risk is not transferred. This is the key to understanding Aquinas and usury.

Risk here has to be taken in a certain sense, because if it is taken too broadly then other errors follow. Aquinas is talking about the risk of ownership. When I own something I have the risk of its destruction or damage as well. When I grant that ownership to another, they now have it. So, in a *mutuum* I transfer ownership to the borrower and this is certainly true. In the case of the *societas* I retain ownership and obtain an equity claim over the business, then I have a just claim to profits. However, what is key here is the property claims which are prior to the risk involved.

Understanding how these property claims work and differ in different contracts is a better key to understanding Aquinas and usury.

Concerning ST II-II, q. 78, a. 2, ad. 7 and is it consistent with not inducing someone to usury.

The participants discuss the three examples given by Aquinas in the reply. The third one is taken as problematic. I believe this is because they are thinking in terms of buyer and seller and who pays more or less. However, if we consider this by mapping the buyer and seller in each case to lender and borrower, I think we can make sense of it.

In the first case, the seller asks a higher price than what is just for a delay in repayment. The seller grants something worth \$10, but demands back \$15 after a certain time. This is clearly usury.

In the second case, the buyer wish to pay less for goods that he pays for early. The buyer grants \$10, but demands back \$15 of something after a certain time. This is clearly usury.

In the third case, the seller asks for a lower price should he be paid sooner. In this way, the buyer grants something at \$10, then requests only \$8 that it should be returned sooner. The seller here is the lender and the buyer is the borrower. Essentially, he offers to accept less in order to receive the return sooner.

This third case appears problematic because, as the participants discuss, it appears that the seller is inducing the buyer to usury. It seems they see this as a different way

of putting the second case. However, the way that Aquinas structures the third case is that the seller is willing to accept less than the thing is worth to have it earlier. Thus, the structure is different from the second case and there is no induction to commit usury.

Nota Bene: These three cases in the Summa Theologica seem to be the same as those discussed in his letter De Emptione.

In the Italian city states, the rulers would engage in forced loans. It seems that interest is justified in this case, even though it would be usury.

The most salient difference in this case is that these were involuntary loans. The citizens were not voluntarily entering *mutuum* contracts for profit but received forced loans. Historically it is not clear if these were actual *mutuum* contracts but they were involuntary and perhaps injurious.

To that point Aquinas does seem to admit that more could be owed on these forced loans. He discusses this on the question of restitution (ST II-II, q. 62, a. 3, ad. 1 & 2). However, this doesn't imply open ended interest on *mutuum* contracts generally because of the categorical differences.

A poor peasant ought to be able to charge something over the principal for a loan when he would otherwise spend it on a down mattress he has been saving up for. This could be as much as the cost of renting the mattress.

Unfortunately the participant at this point provides no principled reason for this assertion. It seems clear to me that it is simply an emotional appeal. This is backed by the suggestion that the peasant is not seeking profit he could have made from other investments which he now receives from the *mutuum*, but simply comfort from the mattress. However, he does seek profit from the *mutuum* and seeks to charge rent on something that doesn't exist, namely the mattress he doesn't buy.

As noted above, there is a principled objection to claiming something more on the basis of giving up the opportunity for something. Contrary to the participant's assertion, the peasant doesn't have a right to his mattress any more than the merchant to his profits, because he gave up his money when he granted the money in the *mutuum*.

Montes Pietatis charge a small amount of interest in order to recuperate costs of contracting loans. This is an example of extrinsic titles in practices. It was approved by the Fifth Lateran Council.

It is true that the [Fifth Lateran Council](#) approved the Montes Pietatis. It is important to note that the Council explicitly approves these and the loans they contract as acts of charity. While one may infer that they are approving of the title of *damnum emergens* it is not clear that this is the case.

Moreover, it is not entirely clear that the loans that Montes Pietatis contracted were actually *mutuum*. A *mutuum* is a grant of a good for a return in kind at a later date. Since the whole ownership is transferred to the borrower, the lender has no property claim whatsoever to charge something against. However, the Montes Pietatis were charitable pawnshops, where the loans were fully secured by the pawn or collateral. This means that the montes could not pursue the borrower personally for recovery of

the principal and if in the case of default the collateral sold for more than the principal the montes returned the excess to the borrower.

The triple contract was functionally equivalent to a *mutuum* but different in nature.

It is important to note that the triple contract was explicitly condemned by Sixtus V in his papal bull *Detestabilis*. This papal bull was largely ignored or downplayed by various theologians of the time.

The key to understanding the triple contract is to understand that the “insurance” portions were personally guaranteed. This is what *Detestabilis* in fact condemns by specifying contracts where the managing partner guarantees the principal and the fixed or variable profits. This is essentially the character of the *mutuum*, because the managing partner personally promises the return of the principal and the profits. So, while the triple contract was characterized as three separate contracts, it really involves a *mutuum* contract.

Duration of time is intrinsic to the notion of a loan and thus should be a consideration. A loan for a day or a year or a hundred years seem to be worthy of different considerations. Why not charge more on the basis of what would have been due otherwise?

The presupposition behind this appears to be that one can charge for time. However, this is an assertion that requires greater explanation. If I loan you money for a day or ten years, what do I have claim to that would lead to a charge for more? I do not have a claim to money. It seems then I would be making a claim upon the additional duration against which I want some additional amount. Since, I don’t own time, I can’t charge for it.

Concerning the time value of money, I would rather have money today more than tomorrow. Aquinas appears to approve of this in the case of the above objection on granting a rebate.

No one doubts that we would prefer to have money now rather than later. However, the relevant question is if we are owed more money later simply because we prefer our money now. Aquinas certainly acknowledges the manifest truth that the seller may prefer his money soon and so grant a lower price. However, he doesn’t concede that this preference could justify an increase in the price, indeed he explicitly rejects this in the same response.

The question is whether the preference for money sooner itself justifies a charge. This is clearly not the case, because a preference is not something vendible. However, a person may reduce his price *motivated* by his preference. This is not itself unjust, because he offers it for a lower price than is just so he may receive it sooner. However, while his preference motivates this reduction, the thing sold justifies the price in the first place.

It is also notable that Innocent XI condemned the time value money *as an excuse for usury*. It may have a relevant place in economic and financial theory, but in the concrete it does not excuse usury.

Money does not have intrinsic value, it is only a means of exchange.

Money is a measure that equates things in exchange. As a measure it must contain within itself that which it measures. For example, to measure the mass of something, you must use something that has mass or to measure motion with time you must use something in motion. This is why in a balance you use standardized objects with a certain mass or a moving clock to measure time.

Now, if we grant that money is the measure of economic value, then in the concrete that which is used as money must itself possess economic value. That money only has value as a means of exchange is a mere abstraction, much like saying that time only has motion in so far as other things move. In the concrete, money presupposes something of value as time presupposes something in motion.

Since the preference for money now is always present and deferred repayment is intrinsic to the nature of the loan, isn't the title always there and intrinsic rather than extrinsic.

This is very insightful. Fr. Thomas Divine makes this point at length in his work *Interest*. One would always prefer to have his money now rather than later. He values his money now more than receiving money in the future. Indeed, no one would engage in a *mutuum* as an economic exchange unless he were to profit from it. However, the *mutuum* is precisely not an economic exchange, but an act of charity. It is not meant as a means to grow our money.

Moreover, we must turn to what the time value of money means. We can either treat it subjectively or objectively. Subjectively it is this preference for money now more than later. In this sense, money later is said to be valued less. Certainly this is true. However, preferences are not the sort of thing that can be charged for. You cannot sell me your preference for money. Therefore, it cannot form the basis of some additional charge on a loan.

Objectively considered it is the fact that you can invest money today and receive more in the future. If I invest in the S&P500, I can have a reasonable expectation over the long term of growth in the amount of money. However, this growth in value is the result of labor, risk and expense in the business within which you invest. It is your claim against those businesses that justify your gains. In the *mutuum* as we've noted above, there is no claim against any assets whatsoever. The claim reduces to the person of the borrower. To treat him as property is patently unjust.

Posted in [Reviews, Usury](#) | Tagged [Sacra Doctrina Project](#), [Sed Contra Podcast](#) | [Leave a reply](#)

McLaughlin on Infallibility of Vix Pervenit

Posted on [October 1, 2020](#)

1

Father Vermeersch in the Catholic Encyclopedia (Art. "Usury") insists that Benedict XIV's encyclical is not an infallible pronouncement, as it was addressed to the Bishops of Italy only. Benedict XIV seems to have thought differently. He says of it: "Verum, quoniam tot Doctorum auctoritate, et argumentis minime perterriti, praedictam exoticam opinionem nonnulli iterum refricare non dubitarunt, propterea nos ad Petri Cathedram evecti, ne Catholicae doctrinae puritas, cujus depositum nobis est a Christo concreditum, hac erroris labe foedaretur, datis ad Italiae Episcopos encyclicis litteris sub die prima Novembris 1745, haec inter cetera declaravimus."

[Truly, since by many influential persons of the Doctors, and arguments of the least terrified, some again do not hesitate to renew an admonished foreign opinion, because we carried out up to the Seat of Peter, lest the purity of Catholic doctrine, of which the deposit is entrusted to us by Christ, in this way be defiled by defect of error, having given to the Italian Bishops the encyclical around the first day of November 1745, we have declared among these things.] (my translation of quote)

[However, as there are some who, undaunted by the authority of so many doctors and arguments, do not hesitate to revive the aforementioned exotic opinion, for this reason

we, raised to the Chair of Peter, have declared this, among other things, lest the purity of Catholic doctrine, the deposit of which Christ has entrusted us with, be sullied by the stain of this error, in encyclical letters of November 1st, 1745.] (someone else's translation)

[HTTPS://ARCHIVE.ORG/DETAILS/ECCLESIASTICALREVIEWV67/PAGE/N269/MODE/2UP](https://archive.org/details/ecclesiasticalreviewv67/page/n269/mode/2up),
MCLAUGHLIN QUOTES BENEDICT XIV'S DE SYNODO DIOCESANS

Based on the quote from Benedict XIV, it appears that his intent was to speak from the Seat of Peter and to teach definitively on the matters discussed in his encyclical.

Posted in [Articles](#), [Magisterium](#), [Quotes](#), [Research](#), [Usury](#) | [1 Reply](#)

[Research Notes – McLaughlin “The Teaching of the Canonists on Usury” \(1939\)](#)

Posted on [November 6, 2020](#)

[Z](#)

Source: [Archive.org](#)

II. Nature of Usury

- Early definitions imprecise
 - “any excess demanded”, “whenever more is required than was given”, etc.
- Three sections
 - “strict” definition: receiving more in a loan
 - Non-loan contracts involving usury
 - Turpe lucrum
- Gratian appear to see usury as whatever exceeds the capital loan or not
 - [This appears to be what Pesch discusses and accepts as usury, despite the centuries of the following tradition.]
- Paucapalea (c. 1148) discusses usury as “what exceeds the capital in a loan, a *mutuum*” (95-96)
 - [Already in the 12th century we see that *mutuum* take the century role in usury]
- Usury
 - *Pecunia* can signify both money and wealth generally (98)
 - Some disputes were discussed around “immoderate usury” in Magisterial documents
 - 4th Lateran Council
 - Alexander III
 - [This goes to the Canon Law Made Easy blog that accepts “moderate” usury as permissible, ironically in opposition to the tradition of canonists.]
 - “Usury is paid only on a loan of a *mutuum*” (100)
 - Hostienis (c. 1200 – 1271) says this the opinion of almost all teachers
 - *Mutuum* is of thing counted, weighed or measured, because these are the sort of things that can be returned in kind.
 - [Ultimately the return in kind is fundamental to the definition of the *mutuum*. The requirement here is a practical consequence of this sort of contract.]

- A mutuum is full-recourse: “The one who borrows incurs the risk of loss and even if the thing is lost by fortuitous chance... he remains bound to repay the loan.” (Institute of Justinian III.14)
- Gregory IX and “Naviganti” (103)
 - Even if the lender retains the risk of loss he is considered a usurer if he demands more
 - The interpretation of the passage is controversial (103n137)
 - Sentence construction is odd and the pronouns are not easy to identify as referring to lender or borrower.
 - [This interpretation is later rejected as untenable according to Navarrus’s *Commentary on the Resolution of Money*]
 - Mutuum is combined with a “collateral contract” (104)
 - [What is meant by a “collateral contract”? That the lender accepts the risk of loss if the property is destroyed? McLaughlin doesn’t seem clear on this point]
- Contracts in fraudem usuraum
 - Canonists held that usury is only in a mutuum but also in other contracts (113)
 - These are usurious from intent rather than from form
 - [This seems like a very difficult position to hold without further clarification. Late developments would explain that the mutuum was virtual and implicit in the contract. So the intent is to contract a mutuum and the form of the contract is a mutuum, even if it is hidden under a different name.]
- Loans on security
 - A mutuum is secured by a pignus
 - The pignus may be a farm, but the pledgor must apply the fruits of the farm to the principal of the mutuum.
 - Canonists agree that if it is not this is usury
 - [The distinction between this and a census really needs to be explained. In both cases, the “lender” has claims to the fruits of the farm. According to Zimmermann the pledgor has forfeiture claims if the loan was unpaid as did the census purchaser according to Munro. How then is a census not a mutuum plus pledge in disguise?]
 - [In any case, we know that a partially collateralized, that is a mutuum secured by property may be usurious when engaged in for profit.]
- Simulated Sale
 - Pretense to buy a field for X, retain the fruits and sell back later at some fixed price
 - Deemed usurious by Innocent III
 - Innocent proposes certain “presumptions” of usury
 - Lender sells back for original price plus some of the fruits
 - Debtor pays more than he received
 - Lender is a habitual usurer.
 - Repurchase agreement may be licit
 - A contract of sale may be conditional and broken later (116)
- Buying and Selling on Credit
 - Familiar venditio dubio
 - These are very clearly mutuum contracts

- Aquinas deals with these in a couple of places
 - McCall will take this theory a bit farther than intended in his work.
- Rent Charges
 - Man buys annual yield of farm for “for a number of years, for his lifetime or *in perpetuum*” (120) – temporary, life and perpetual census contracts
 - Approved by Innocent IV
 - This is a real contract of sale
 - There are disputes about making more than given
 - In a life census this is variable because the seller may die and the property is transferred unburdened to heirs
 - In the perpetual census this is guaranteed but Host approves (120)
 - McLaughlin then moves to the Italian montes
 - This was discussed with the rent charges by the canonists
 - [This has always seemed a strange point to me, because the state confiscates the property of its citizens and then pays them. There is no contract involved since it is involuntary. The city grants them a claim to annual payments, which they can sell (121), but this nonetheless doesn’t appear to be usury.]
 - [It is still not clear to me based on what McLaughlin reports of the canonists how the census differs from a mutuum cum pignore. At best it appears that there must be something of a risk involved with the fruits of the census, but this is just as much for the usurer drawing more from the pignus. The second point is that the census is a sale where the mutuum is not, but this does not resolve the issue either. Just say that the mutuum cum pignore is a sale. The question for my position that McLaughlin doesn’t address is what happens if the pignus when sold fails to cover the remaining principal.]
- Other Contract
 - Lucrum cessans (123)
 - Innocent IV condemns allowing a merchant to gain the profit he would have made on money he lends in a mutuum
 - Hostiensis disagrees
 - From delay (123)
 - Andreae allows excess only for delay of what he could have made
 - Same quantity when differs in price (inflation/deflation)

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[Aquinas – Money Varies in Value](#)

Posted on [December 28, 2020](#)

Aquinas Sent Ethica lib. 5, lec. 9, n.10 (n.987)

Oportet enim istam esse virtutem denarii, ut quando aliquis ipsum affert, statim contingat accipere illud quo homo indiget. Verum est autem quod etiam denarius patitur hoc idem quod aliae res, quod scilicet non semper pro eo homo accipit quod vult, quia *non semper potest aequale*, idest non semper est eiusdem valoris; sed tamen

taliter debet esse institutus, ut magis permaneat in eodem valore quam aliae res. ([here](#))

The particular virtue of currency must be that when a man presents it he immediately receives what he needs. However, it is true that currency also suffers the same as other things, viz., that it does not always obtain for a man what he wants because it cannot always be equal or of the same value. Nevertheless it ought to be so established that it retains the same value more permanently than other things. ([here](#))

Posted in [St. Thomas Aquinas](#) | [Leave a reply](#)

Aquinas, Money and Fixed Value

Posted on [December 21, 2020](#)

4

One of the arguments that Aquinas is supposed to have given against usury is that money has a fixed value. Consequently, to receive more at a later date violates this fixed value. Money several days or years in the future has the same value as it did at the beginning. This issue with this, as with most superficial objections to Aquinas, is that it doesn't account for the things he actually writes.

In the first place, this view is attributed to Aquinas based on an argument from his Commentary on the Sentences. He is said to assume that the value of money is merely fixed by the State and therefore cannot change. To receive more later than is to receive more than was given. However, in reading the passage from the Commentary, he never claims that the value of money is fixed, less so that it is fixed by the State.

He considers that money is a measure and to receive more money for money is to "diversify the measure." For example, if I gave you a dollar and you gave me three or five quarters in return, the exchange is not equal and consequently unjust. There is nothing here that requires that the "value" of money be fixed or fixed by the State, such that it is constant over time.

Beyond this, we must consider his broader discussion elsewhere. In the Summa Theologiae and the De Malo, Aquinas speaks more broadly and reject usury not just in mutuum loans of money, but also wine, corn, shoes, silver vases, etc. The "value" of these things are obviously not fixed and he admits elsewhere that prices vary. However, he takes these as examples of usury nonetheless.

Consequently, to see Aquinas' argument against usury as grounded in a fixed value set by the State is simply wrongheaded. It does not consider the actual thing that he says or the other potential objects of usury that he treats.

Posted in [St. Thomas Aquinas, Usury](#) | [4 Replies](#)

Popular Progressio & Usury

Posted on [December 16, 2020](#)

54. All nations must initiate the dialogue which We called for in Our first encyclical, [Ecclesiam Suam](#). (56) A dialogue between those who contribute aid and those who receive it will permit a well-balanced assessment of the support to be provided,

taking into consideration not only the generosity and the available wealth of the donor nations, but also the real needs of the receiving countries and the use to which the financial assistance can be put. Developing countries will thus no longer risk being overwhelmed by debts whose repayment swallows up the greater part of their gains. **Rates of interest [usuris] and time for repayment of the loan [mutuo] could be so arranged as not to be too great a burden on either party, taking into account free gifts, interest-free or low-interest [parvis usuris] loans, and the time needed for liquidating the debts [credita].**

54. Quam ob causam prorsus necesse est, ut omnes populi in illud veniant colloquium, quod flagrantibus expetivimus votis, cum primas Nostras Encyclicas Litteras, a verbis incipientes Ecclesiam Suam (56), dedimus. Si huiusmodi colloquium instituat inter eos qui adiumenta comparant, et eos qui hisce auxiliis fruuntur, facile fiat, ut conferenda subsidia aequa lance expendantur, non modo pro illorum largitate et copia, sed etiam pro horum et vera subsidiorum necessitate et subsidiorum adhibendorum facultate. Exinde iam non erit periculum, ne nationes, quae ad progressionem nituntur, aere demergantur alieno, ad quod solvendum suos praecipuos quaestus impendant. **Utraque pars astipulari sane poterit de usuris itemque de tempore, quo pecuniae mutuo acceptae sint reddendae, iis tamen condicionibus quae ab utraque parte ferantur, aequando scilicet gratuita dona, pecunias sine ullo fenore vel parvis tantum usuris sumptas, atque annos, quibus credita gradatim solvantur.**

[ENGLISH](#). [LATIN](#)

There does not seem to be anything specifically doctrinal in these statements. St. Pope Paul VI says that wealthy nations should not over burden developing nations with too great a debt. The terms that St. Paul uses are indeed usury and mutuum in the Latin. However, this appears to be taken as synonymous with “fenus” and “creditus,” which are interest and loan more generally.

Posted in [Magisterium](#), [Usury](#) | [Leave a reply](#)

Update

Posted on [December 15, 2020](#)

I've been working on an academic article. It is related to the tentative [syllogism](#) I wrote about early. The article will propose the usury argument under a new perspective that, I argued, stand up against the majority of objections. I also plan to address objections to each of the propositions in the syllogism. I'm trying to make it as comprehensive as possible, but there is a lot of material and journal articles have their limits.

Posted in [Admin](#) | [Leave a reply](#)

Decretals of Gregory IX – De Usuris

Posted on [December 10, 2020](#)

Source: <http://www.thelatinlibrary.com/gregdecretals5.html>

TITULUS XIX. DE USURIS.

CAP. I. Usura est lucrificare fructus rei pignorate; fallit in casu hic excepto.

Alexander III. in concilio Turonensi. Plures clericorum, et, quod moerentes dicimus, eorum quoque, qui praesens saeculum professione vocis et habitu reliquerunt dum communes usuras, quasi manifestius damnatas, exhorrent, commodata pecunia indigentibus, possessiones eorum in pignus accipiunt, et provenientes fructus percipiunt ultra sortem. Idcirco Generalis concilii decrevit auctoritas, ut nullus amodo constitutus

in clero vel hoc vel aliud genus usurae exercere praesumat. Et si quis [*hactenus*] alicuius possessionem data pecunia sub hac specie vel conditione in pignus acceperit, si sortem suam deductis expensis de fructibus iam perceperit, absolute possessionem restituat debitori. Si autem aliquid minus habet, eo recepto, possessio libere ad dominum revertatur. Quodsi post huiusmodi constitutum in clero quisquam exstiterit, qui detestandis usurarum lucris insistat, ecclesiastici officii periculum patiatur, nisi forte ecclesiae beneficium fuerit, quod redimendum ei hoc modo de manu laici videatur.

CAP. II. Idem in effectu dicit cum praecedenti cap., sed addit tacite idem esse in laicis. Nam in praecedenti capite tantum fuit facta mentio de clericis.

Idem Cantuariensi Archiepiscopo et eius Suffraganeis.

Quoniam non solum viris ecclesiasticis, sed etiam quibuslibet aliis periculosum est usurarum lucris intendere, auctoritate *tibi* praesentium duximus iniungendum, ut eos, qui de possessionibus vel arboribus, quas tenere in pignore noscuntur, sortem *suam* deductis expensis *inde iam* receperunt, ad eadem pignora restituenda sine usurarum exactione ecclesiastica distractione compellas.

CAP. III. Manifesti usurarii ad communionem altaris et ecclesiasticam sepulturam et oblationem offerendam admitti non possunt, et clerici, contra hoc facientes, puniantur, ut hic dicitur.

Idem in concilio Lateranensi. Quia in omnibus fere locis ita crimen usurarum invaluit, ut multi, aliis negotiis praetermissis, quasi licite usuras exerceant, et qualiter utriusque testamenti pagina condemnentur, nequaquam attendant: ideo constituimus, quod usurarii manifesti nec ad communionem admittantur altaris, nec Christianam, si in hoc peccato decesserint, accipiant sepulturam, sed nec oblationes eorum quisquam accipiat. Qui autem acceperit, vel Christianae tradiderit sepulturae, et *ea*, quae acceperit, reddere compellatur, et, donec ad arbitrium episcopi sui satisfaciatur, ab officii sui maneat executione suspensus.

CAP. IV. Potest intelligi dupliciter, primo in mutuante, secundo recipiente usuras, et secundum primum intellectum hoc dicit: Etiam pro opere pio non licet usuras recipere, quando per receptionem datur causa usurae committendae. H. d. Vel sic et clarius: Non licet inducere quem ad exercendum usuras etiam pro pio opere. Et ista lectura colligitur ex decisa.

Idem Panormitano Archiepiscopo.

Super eo vero, *quod a nobis tua dilectio postulavit, utrum possit in recipienda pecunia ad usuram dispensatio fieri, ut pauperes, qui in Sarracenorum captivitate tenentur, per eandem possint pecuniam liberari, praesentibus tibi literis* Respondemus, quod, quum usurarum crimen utriusque testamenti pagina detestetur, super hoc dispensationem aliquam posse fieri non videmus, quia, quum scriptura sacra prohibeat, *vel* pro alterius vita mentiri, multo magis prohibendus est quis, ne etiam pro redimenda vita captivi usurarum crimine involvatur.

CAP. V. Usurarii, qui sunt solvendo, coguntur per poenas Lateranensis concilii usuras restituere, etiam quas ante concilium receperunt; et facultatibus non exstantibus debent possessiones, emptae ex pecunia foenebri, vendi, et debentibus recipere satisfieri. Idem Salernitano Archiepiscopo.

Quum tu, *sicut asseris*, manifestos usurarios, *scilicet qui in illo peccato decesserint*, iuxta decretum nostrum, quod nuper in concilio promulgatum est, communione altaris et ecclesiastica praeceperis sepultura privandos, donec reddant quod tam prave receperant: quidam eorum *dicunt, ad solvendas perceptas usuras proprias non sufficere facultates. Alii vero promittunt, [se] partes usurarum, quas habent prae manibus, reddituros; sed usuras alias, quas extorserant, quum de his possessiones comparatae sunt, et eorum filiis vel parentibus traditae, se non posse reddere confitentur. Alii vero ad excusandas excusationes in peccatis impudenter affirmant, illas duntaxat usuras restituendas, quae sunt post interdictum nostrum receptae, nec aliquos ad solvendas usuras, quas ante interdictum nostrum receperant, debere compelli*. Super his fraternitati tuae taliter respondemus, quod, sive ante sive post interdictum nostrum usuras extorserint, cogendi sunt per poenam, quam statuimus in concilio, eas his, a quibus extorserunt, vel eorum heredibus restituere, vel, his non superstitibus, pauperibus erogare; dummodo in facultatibus habeant, unde ipsis possint eas restituere, quum iuxta verbum B. Augustini non remittatur peccatum, nisi restituatur ablatum. Illi autem, qui non habent in facultatibus, unde usuras valeant restituere, non debent ulla poena mulctari, quum eos nota paupertatis evidenter excuset. Possessiones vero, quae de usuris comparatae sunt, debent vendi, et ipsarum pretia his, a quibus usurae sunt extortae, restitui, ut sic non solum a poena *illa*, sed etiam a peccato possint, quod per usurarum extorsionem incurrerant, liberari. CAP. VI. Vendens rem plus, quam valeat, quia solutionem differt, peccat, nisi dubium sit, an tempore solutionis erit valor rei variatus, et venditor non erat venditurus tempore, quo vendidit. H. d. secundum communem intellectum. Idem Genuensi Archiepiscopo.

In civitate tua dicis saepe contingere, quod, quum quidam piper, seu cinamomum, seu alias merces comparant, quae tunc ultra quinque libras non valent, et promittunt *per publicum instrumentum*, se illis, a quibus illas merces accipiunt, sex libras statuto termino soluturos. Licet autem contractus huiusmodi ex tali forma non possit censi nomine usurarum, nihilominus tamen venditores peccatum incurrunt, nisi dubium sit, merces illas plus minusve solutionis tempore valituras. Et ideo cives tui saluti suae bene consulerent, si a tali contractu cessarent, quum cogitationes hominum omnipotenti Deo nequeant occultari. CAP. VII. Usurarius monitus, non desistens, si clericus est, ab officio et beneficio suspenditur; si laicus, excommunicatur. Idem.

Praeterea parochianis tuis usuras recipere *omnibus modis* interdicas, *quia usurarum crimen utriusque testamenti pagina detestatur*. Qui si *monitis vestris* parere contempserint, si clerici sint, eos ab officio beneficioque suspendas; si *[vero]* laici *fuerint*, usque ad dignam satisfactionem ipsos vinculo excommunicationis adstringas. CAP. VIII. Fructus rei pignorate computari debent in sortem, et excipit unum casum.

Idem Abbati et Fratribus S. Laurentii. Conquestus est nobis C. clericus *praesentium lator*, quod, *licet de quadam terra, quam pater suus vobis obligavit, sortem vestram deductis expensis receperitis, terram tamen ipsam non sine derogatione vestrae salutis, honestatis et famae nihilominus detinetis. Inde est, quod* Discretionem vestram *per apostolica scripta praecipiendo* mandamus, quatenus, si terram ipsam titulo pignoris detinetis, et de fructibus eius sortem *vestram* recepistis, praedictam terram clerico memorato *dilatione et appellatione cessante* reddatis, *et in pace et quiete dimittatis*,

nisi *forte* terra ipsa de feudo sit monasterii vestri. CAP. IX. Heres, usurarii filius vel extraneus, usuras, extortas per defunctum, restituere compellitur. Idem Episcopo Placentino.

Tua nos duxit fraternitas consulendos, quid sit de usurariorum filiis observandum, qui eis, in crimine usurarum defunctis, succedunt, aut de extraneis, ad quos bona usurariorum asseris devoluta. Tuae igitur quaestioni literis praesentibus respondemus, quod filii ad restituendas usuras ea sunt distractione cogendi, qua parentes sui, si viverent, cogerentur. Id ipsum etiam contra heredes extraneos credimus exercendum.

CAP. X. Mutuans ea mente, ut ultra sortem aliquid recipiat, tenetur in foro animae ad illud restituendum, si ex hoc aliquid consecutus est. Idem in non dante parabolam iuramenti, nisi aliquid inde recipiat. Et idem in vendente rem plus, quam valeat, quia differt solutionem.

Urbanus III. Consuluit nos tua devotio, *in quo sacerdotalis officii sollicitudinem commendamus*, an ille in iudicio animarum quasi usurarius debeat iudicari, qui non alias mutuo traditurus, eo proposito mutuam pecuniam credit, ut, licet omni conventionem cessante, plus tamen sorte recipiat; et utrum eodem reatu criminis involvatur, qui, ut vulgo dicitur, non aliter parabolam iuramenti concedit, donec, quamvis sine exactione, emolumentum aliquod inde percipiat; et an negotiator poena consimili debeat condemnari, qui merces suas longe maiori pretio distrahit, si ad solutionem faciendam prolixioris temporis dilatio prorogetur, quam si ei in continenti pretium persolvatur. Verum quia, quid in his casibus tenendum sit, ex evangelio Lucae manifeste cognoscitur, in quo dicitur: "Date mutuum, nihil inde sperantes;" huiusmodi homines pro intentione lucri, quam habent, quum omnis usura et superabundantia prohibeatur in lege, iudicandi sunt male agere, et ad ea, quae taliter sunt accepta, restituenda, in animarum iudicio efficaciter inducendi. CAP. XI. Manifestus usurarius, appellans ad subterfugendum restitutionem, audiendus non est. Innocentius III. Praelatis in regno Franciae constitutis.

Quam perniciosum sit vitium usurarum, discretionem vestram non credimus ignorare, quum praeter constitutiones canonicas, quae in earum odium emanarunt, per Prophetam detur intelligi, eos, qui suam dant pecuniam ad usuram, a tabernaculo Domini repellendos, et tam in novo quam in veteri testamento prohibita sint usurae, quum ipsa veritas praecipiat: "Mutuum date, nihil inde sperantes," et per Prophetam dicatur: "Usuram et omnem superabundantiam non accipias." Inde est, quod universitati vestrae per apostolica scripta Mandamus, quatenus manifestos usurarios, eos maxime, quos usuris publice renunciassent constiterit, quum aliquis eos convenerit de usuris, nullius permittatis appellationis subterfugio se tueri. [Dat. Lat. V. Kal. Nov. 1198.] CAP. XII. Per subtractionem communionis Christianorum et per principes saeculares cogendi sunt Iudaei ad usuras restituendas.

Idem Narbonensi Archiepiscopo.

Post miserabilem (*Et infra:*) [*Si qui vero proficiscentium illuc ad praestandas usuras iuramento tenentur adstricti, vos, fratres archiepiscopi et episcopi, per vestras dioeceses creditores eorum sublato appellationis obstaculo eadem distractione cogatis, ut eos a*

sacramento penitus absolventes, ab usurarum ulterius exactione desistant. Quod si quisquam creditorum eos ad solutionem coegerit usurarum, eum ad restitutionem earum sublato appellationis obstaculo districtione simili compellatis.] Iudaeos [vero] ad remittendas Christianis usuras per vos, filii principes et potestates compelli praecipimus saeculares. Et, donec eis remiserint, ab universis Christi fidelibus tam in mercimoniis quam in aliis per excommunicationis sententiam eis iubemus communionem omnimodam denegari. [Ab hoc igitur opere nullus omnino se subtrahat etc. Dat. Reate XVIII. Kal. Sept. 1198.]

CAP. XIII. Non obstante iuramento de non repetendis usuris, per debitorem praestito, potest iudex ex officio suo usurarium ad restituendas usuras compellere.

Idem Mutinensi Episcopo.

Tuas dudum recepimus quaestiones, quod quidam usurarii *tuae dioecesis* eos, quibus dant pecuniam ad usuram, praestare faciunt iuramentum, quod usuras non repetant, et super his, quas solverint, nullam moveant quaestionem. Nos igitur *inquisitioni tuae taliter* respondemus, ut usurarios ipsos monitione praemissa per censuram ecclesiasticam appellatione remota compellas, ante usurarum solutionem ab earum exactione desistere, vel restituere ipsas, postquam fuerint persolutae, ne de dolo et fraude *suo* contingat eos commodum reportare, *qui ad hoc praestari faciunt iuramentum, quod super usuris non valeant molestari.*

CAP. XIV. Non auditur usurarius repetens usurus, nisi prius restituat extortas.

Idem.

Quia *[igitur]* frustra legis auxilium invocat qui committit in legem: statuimus, ut, si quis usurarius a nobis literas impetraverit super restituendis usuris, vel fructibus computandis in sortem, nisi prius ipse restituerit usuras, quas ab aliis noscitur recepisse, auctoritate literarum ipsarum nullatenus audiatur. *[Dat. Romae V. Kal. Ian. 1205.]*

CAP. XV. Convictus de usuraria pravitate per formam et alia argumenta, potest manifestari usurarius, et tanquam manifestus usurarius compesci secundum dispositionem Lateranensis concilii. Idem Altissiodorensi Episcopo.

Quum in dioecesi tua sint quam plurimi usurarii, de quibus minime dubitatur, quin sint usurarii manifesti, contra quos propter timorem *principum et* potentum, qui tumentur eosdem, nullus accusator apparet, nec iidem sunt per sententiam condemnati, *qualiter procedere valeas contra ipsos, oraculum duxisti sedis apostolicae requirendum. Nos autem* Fraternitati tuae taliter respondemus, quod, licet contra eos non appareat accusator, si tamen aliis argumentis illos constiterit esse usurarios manifestos, in eos poenam in Lateranensi concilio contra usurarios editam libere poteris exercere. *[Dat. Lat. XVII. Kal. Iun. Ao. X. 1207.]*

CAP. XVI. Maritus, recipiens pignus pro dote promissa, non tenetur fructus in sortem computare. H. d. est casus singularis, et alibi non probatur.

Idem.

Salubriter (*Et infra:*) Sane generum ad fructus possessionem, quae sibi a socero sunt pro numerata dote pignori obligatae, computandos in sortem non credimus compellendum, quum frequenter dotis fructus non sufficiant ad onera matrimonii supportanda.

CAP. XVII. Repetens usuras non auditur, nisi restituat extortas per se, vel per alium, a quocunque causam habeat.

Idem Episcopo Bononiensi. Michael laicus suam nobis querimoniam destinavit, quod M. et quidam alii Bononienses cives multa extorserunt ab eo, et a patre suo, cuius heres exstitit, nomine usurarum. (*Et infra:*) Attentius provisurus, ne auctoritate nostra in negotio procedas eodem, nisi dictus conquerens restituerit vel adhuc restituat, si quas aliquando ipse vel pater eius extorsit usuras.

CAP. XVIII. Etiam Iudaei compellendi sunt ad restituendas usuras extortas a Christianis, et ad solvendas decimas vel oblationes de eorum possessionibus.

Idem in concilio generali. Quanto amplius Christiana religio ab exactione compescitur usurarum, tanto gravius super his Iudaeorum perfidia insolescit, ita, quod brevi tempore Christianorum exhausti facultates. Volentes igitur in hac parte prospicere Christianis, ne a Iudaeis immaniter aggraventur, synodali decreto statuimus, ut, si de cetero quocunque praetextu Iudaei a Christianis graves immoderatasve usuras extorserint, Christianorum eis participium subtrahatur, donec de immoderato gravamine satisfecerint competenter. Unde Christiani, si opus fuerit, per censuram ecclesiasticam appellatione postposita compellantur ab eorum commerciis abstinere. Principibus autem iniungimus, ut propter hoc non sint Christianis infesti, sed potius a tanto gravamine studeant cohibere Iudaeos. Hac eadem poena Iudaeos decernimus compellendos ad satisfaciendum ecclesiis, pro decimis et oblationibus debitis, quas a Christianis de domibus et possessionibus aliis percipere consueverant, antequam ad Iudaeos quocunque titulo devenissent, ut sic ecclesiae conserventur indemnes.

CAP. XIX. Usurarius est, qui a debitore recipit aliquid ultra sortem, etiamsi suscipiat in se periculum. H. d. primo. Non est usurarius emptor rei minus iusto pretio, si tunc verisimiliter dubitetur, an tempore solutionis plus vel minus sit res valitura. H. d. secundo. Propter dubium excusatur is, qui ex eo, quod differt solutionem pretii, vendit rem plus, quam valeat, si non erat eam alias venditurus. Hoc dicit tertio.

Gregorius IX. Fratri R.

Naviganti vel eunti ad nundinas certam mutuans pecuniae quantitatem, pro eo, quod suscipit in se periculum, recepturus aliquid ultra sortem, usurarius est censendus. Ille quoque, qui dat X. solidos, ut alio tempore totidem sibi grani, vini vel olei mensurae reddantur, quae licet tunc plus valeant, utrum plus vel minus solutionis tempore fuerint valiturae, verisimiliter dubitatur, non debet ex hoc usurarius reputari. Ratione huius dubii etiam excusatur, qui pannos, granum, vinum, oleum vel alias merces vendit, ut amplius, quam tunc valeant, in certo termino recipiat pro eisdem; si tamen ea tempore contractus non fuerat venditurus.

Just Thomism – On Usury

Posted on [February 24, 2021](#)

I have read Just Thomism for many years now. I have a certain respect for Dr. Chastek and his insights. However, his recent [post on usury](#) requires some corrections. Given the purpose of this blog, I'd like to respond to his post.

The first mistake is the confusion of the contract of *mutuum* with the good granted in a *mutuum*. A *mutuum* is a contract or agreement between persons. It is really the act of lending and *mutuum* is often used as a verb by authors. This is how St. Thomas speaks about it [1] and the entire tradition.[2] This is very basic context for Thomas' treatment of usury, so I wonder if this is merely an idiosyncratic (though misleading) manner of speaking.

The posts also makes what is the classic – though contrary to St. Thomas – error of understanding that the difference regarding consumption as a matter of good rather than the contract. St. Thomas makes it clear that things may have more than one use, one which may consume the thing and the other which may not. A vase can be sunk in exchange or used to serve drink. A pair of shoes may be sunk in exchange or worn. Currency may be sunk in exchange or put on display or held as security.[3] What matters is not the nature of the good, which is indifferent to the use we make of it, but rather the nature of the contract that treats the good as consumable or not. That is, the *mutuum* grants the borrower authorization to consume or alienate the good, whereas the loan of *commodatum* or lease of *locatio* do not.

On points 4 and 5, I would work to clarify things because I think there is something missing or at least unclear. When the good is transferred to the borrower, he is obliged to return it in kind. The lender, in a sense, charges for the good granted and this charge is equivalence in kind and quantity. This is due to the fact that the *mutuum* is not a donation or gift, but the borrower is obliged to pay the lender back.

Aquinas famously argues that in the *mutuum* the ownership and use cannot be separated. [4] Since the borrower can consume or alienate the thing, the use cannot be separated from the ownership, because to use it in a way that consumes or alienates it dissolves or transfers the ownership. When the lender makes an excess charge, he is attempting to charge for the use of thing, making a usufruct claim to it. However, given the nature of the contract, a usufruct claim cannot exist and Aquinas makes this clear in several places. [5] It is the usufruct for which the lender makes a charge which is usury. In this sense, he either charges twice, namely for the ownership that remits the just debt and again as use inseparable from ownership, or for something that doesn't exist, namely the usufruct which cannot exist in a *mutuum*.

Along these lines, I'm not sure that there is a substantial difference between 4 and 5. In 4, the lender charges for the ownership and additionally charges for what is not his own. Yet, after the *mutuum* is effected what is not his own is now the ownership and use of the thing. I think 5 is more clear than 4, but I'd be interested in what Dr. Chastek thinks is the theoretical or practical importance of the proposed difference.

Part of the problem noted in 6 is a matter of the deficiency of English rather than a substantial theoretical point. In English, "borrow" typically means to take a good and return the same thing later. I suspect this part and parcel with the near universal acceptance of usury which has made its way into how we speak. However, we can make a distinction, as did Aquinas (see note 1) and others, between borrowing with an obligation to return in particular and in kind. In both cases, a man grants something to be received back later. In the first case, we have a *commodatum* where he receives the same thing, but in the second case we have a *mutuum* where he receives a thing of similar kind and quality. English conflates these two under the one word "loan." How

we should parse this out linguistically is important (some authors translate the two as “loan for use” and “loan for consumption”), but simply denying that a *mutuum* is a sort of borrowing seems off the mark.

[1] “First when one man simply transfers his thing to another in exchange for another thing, as happens in selling and buying [venditione et emptione]. Secondly when a man transfers his thing to another, that the latter may have the use of it with the obligation of returning it to its owner. If he grant the use of a thing gratuitously, it is called “usufruct” in things that bear fruit; and simply “borrowing” or “loan” in things [mutuum seu commodatum] that bear no fruit, such as money, pottery, etc.; but if not even the use is granted gratis, it is called “letting” or “hiring.” [locatio et conductio] Thirdly, a man transfers his thing with the intention of recovering it, not for the purpose of its use, but that it may be kept safe, as in a “deposit,” [deposito] or under some obligation, as when a man pledges [pignori] his property, or when one man stands security for another.” (ST II-II, q. 61, a. 3, co., emphasis mine) The point here is that Aquinas places the *mutuum* in the same context as sales, leases, and other contracts.

[2] The *mutuum* is initially defined in Roman Law, but there are indications that it has a much longer heritage than the Roman jurists (See [Institutes of Justinian Book III Title XIV](#)). The canonists of the 12th century also took this up in understanding usury and even argued that usury is only in the *mutuum* (See [McLaughlin, “The Teaching of the Canonists on Usury”](#)) A look at any of the 15th to 18th century late Scholastics, especially the *De Justitia de Jure* volumes, will bare this out. In those works particularly, the Scholastics treat contracts in general and numerous contracts in particular, the *mutuum* being one. Even in some of the early 20th century works on moral theology, the *mutuum* is treated as specifically a contract rather than a good (See [Callan, Moral Theology, 1749\(a\)](#))

[3] See ST II-II, q. 78, a. 1, ad. 6 and De Malo q. 13, a. 4, ad. 15.

[4] Notably this is not novel to Aquinas, but is spoken of in the Institutes and Digest of Justinian with respect to the existence of a usufruct.

[5] “Wherefore **if he exacts more for the usufruct** of a thing which has no other use but the consumption of its substance, he exacts a price of something non-existent: and so his exaction is unjust.” (ST II-II, q. 78, a. 1, ad. 5., emphasis mine)

“Hence it is that in civil law [Inst. II, iv, de Usufructu] it is stated that “those things according to natural reason and civil law which are consumed by being used, do not admit of usufruct,” and that “the senate did not (nor could it) appoint a usufruct to such things, but established a quasi-usufruct,” namely by permitting usury.” (ST II-II, q. 78, a. 1, ad. 3) That is the civil law permits usury by allowing for a usufruct to be established, which one cannot exist.

“Deuteronomy 23 forbids that it be given to a brother in usury, because he sells what does not exist, [because] he does not have usufruct (the right of enjoying the use and advantages of another’s property short of the destruction or waste of its substance).” ([Commentary on Psalm 14](#)) Loughlin translates the “cum” clause here as “although.” Given the context, I think a causal interpretation is more appropriate, namely it is because he does not have the usufruct that he sells what does not exist.

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Research Notes – Usury and the Commercialization of Feudal Bonds by Shael Herman

Posted on [February 1, 2021](#)

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I've recently finished the book "[Medieval Usury and the Commercialization of Feudal Bonds](#)" by Shael Herman. It is a detailed investigation into the credit transactions growing out of feudal tenements. These specifically are the census or redditus contracts of great controversy in usury discussions. The book is important for a few reasons. First, Herman is unabashedly anti-Catholic or at least attributes bad faith to ecclesiastics and canonists in their treatment of the census. He is therefore unlikely to be an apologist for the Church and gloss over any important defects. Second, he approaches this project as a modern law professor and so draws interesting and important parallels to modern contracts that ultimately help clarify the usury doctrine. Hence, his work contains a number of insights and discoveries that are important to understanding and demonstrating the consistency of the usury doctrine.

His first important insight is that he confirms, at least in the case of England and France, that the census contract was non-recourse or asset-recourse. He writes, "If [the tenant] defaults under the lease [to the census seller], [the census purchaser] cannot sue [the seller] because [the seller] **was bound on a non-recourse basis**. A personal judgement against [the seller] is impossible." (pg. 38, emphasis mine) This was already implicit in the [doctrinal statement of Callistus III](#), but Herman calls it out explicitly, using modern terminology from the perspective of a lawyer.

Another important point is that Herman relates the census to a modern leaseback agreement. He writes, "Viewing the transaction through the eyes of a modern real estate lawyer, we might say that the tenant and his new lord had accomplished a **primitive leaseback**; alternatively, the transaction might consist of a tenant's assignment to the third party-assignee followed by the assignee's sublease in the tenant's favor." (pg. 28) In the leaseback the ownership is transferred with the condition that the seller rent it back to the seller. This confirms the typical analysis of the census contract as a sale. However, Herman's second option suggests that only certain rights are transferred, such as a usufruct rather than ownership. This would be consistent with De Lugo's explanation (See Noonan 242) and could differentiate a life or perpetual census from a temporary census. In the later, the usufruct claim is simply extinguished, whereas in the former the purchaser holds the property.

A final important point is that Herman notes when the census was considered manifestly usurious. He writes, "notably the one [abuse judged manifest usury] constituted in the duty imposed on the rent debtor to repurchase the rent if the arrearages are unpaid." (pg. 105 n126) That is if the purchaser attempts to redeem the census against the seller and get back his money, this is usury. Again, we see the full recourse nature of usury, because the seller goes after the person of the seller for his return rather than accepting his real claim to property. This potentially clarifies the problem with the mutually redeemable census, because the purchaser exacts his claim for return against the person of the seller rather than the property itself.

While Herman sees the Church's approval of the census as manifest hypocrisy, his research is very important. It helps to demonstrate certain essential components of the doctrine and even its consistency. It certainly seems that Herman is right that the usury doctrine did lead to the development of the census contract as a licit means of profit. Where Herman errs in his essay is failing to ever attempt to understand the usury doctrine in the first place. It is therefore ironic that whereas he makes not attempt, his research actually clarifies and strengthens the Church's perennial doctrine.

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Bonaventure on Usury

Posted on [April 13, 2021](#)

Source: [Opera Omnia](#)

Sed quaeritur: quare, si accommo tibi vestem vel equum vel domum pro denariis, non est usura, sicut est de pecunia? – Dico, quod in veste vel equo vel domo trahitur usus ex re, non ex pecunia; et ideo non dicitur usura. Quidam credunt, quod usura sit mala, quia prohibita; sed certe est prohibita, quia mala. In mutuo meum fit tuum; et si tu acquiras aliquid per industriam tuam ex illo mutuo, et ego aliquid de illo repeto; vendo tempus, quod est commune, et quod non est licitum vendere. Sed in accommato non transit res mea in tuam, ut in mutuo pecunia mea fit tua; et non minoratur pecunia nec peioratur, sicut contingit in domo vel veste vel equo, quia oportet pecuniam reddere totam et integram. Et ideo, cum ex usura homo petit aliquid est ibi perversio ordinis et appropriatio communitatis; et debet quilibet sibi de hoc cavere. Sic igitur, quando fit circumventio cum pactione iniqua, dicitur usura.

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Current Project List

Posted on [June 30, 2021](#)

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Research

1. Sollicitudo translation
2. Innocent's Apparatus translation on census
3. Reread Munro on census
4. Finish reading Ambrose's De Tobia
5. Veritatis Splendor and Moral Theology

Writing

1. Usury Syllogism Essay for academic journal
2. Magisterial Development Essay for Thomistica
3. Extrinsic Title Essay – Outline
4. Proper Interpretation of Aquinas on Usury

Posted in [Admin](#) | [7 Replies](#)

Quolibet III – On Usury (English)

Posted on [June 30, 2021](#)

Source: <https://aquinas.cc/la/en/~QIII.Q7.A2>

Article 2

On usury

To the second it is proceeded thus. It seems that whatever someone should gain from usurious money, he is held to return.

Objection 1: For the Apostle says in Romans 11:16: *if the root is holy, also the branch*; therefore also conversely, if the root is infected, also the branch; but the branch of this gain is infected and usurious; therefore the whole is infected and usurious; therefore he cannot licitly retain gain of this sort.

But on the contrary: Whatever man licitly can hold that which legitimately he has acquired; but that which is acquired from usurious money, sometimes legitimately is acquired; therefore licitly it can be retained.

Response: It must be said that the truth of this question could be apparent, if there were to be considered the *ratio* why to receive usury is a sin. For it is not a sin only because it is prohibited, but because it is against the natural *ratio*, as even the Philosopher says in the first book of the *Politics*.

Unto the evidence of which it must be considered that of things coming into the use of man certain ones are those whose use is not the consumption of the thing itself, and, if it should happen that the thing is deteriorated or consumed through use, this is *per accidens*; just as a house, a garment, a horse, a book, and things of this sort; for to use a book is not to delete [Latin “delete”?] it, nor is to use a house to destroy it. And in such things to give the use of the thing is one thing and to give the substance of the thing is another, and on account of this, when through accommodation the use of such a thing is conceded to another, not on account of this is the dominion of the thing transferred; and on account of this there also can be sold [vendi] the use of the thing, with the dominion of the thing remaining with the lord, just as is clear in renting and letting, which are licit contracts.

Whereas certain things are those whose use is nothing else than the consumption of the things themselves, just as money which we use by spending, wine which we use by drinking, and thus concerning other things of this sort, in which to use a thing is nothing else than to consume it. And for this reason in such things when the use of the thing mutually [per mutuum, better: “through a mutuum”] is conceded, there is transferred also the dominion of the thing. Therefore because the use of the thing is not separable from the thing itself, whoever sells [vendit] the use of such things by retaining an obligation to himself unto returning the capital, it is manifest that the same man is selling both, which is against natural justice, and for this reason to demand usury is according to itself unjust.

Therefore someone must be held to restore that which he receives beyond the capital, because he receives it unjustly, and consequently also to take part in the losses. But, since his usurious money is not another use than its very substance, by the *ratio* already said, it is clear consequently that, out of which he returns usurious money, from the use of the money he is held to return nothing. Yet someone would be held to return that which he would gain from another’s home or horse or something of

this sort, even after he had returned things of this sort, because in such things there is valued the thing and the use of the thing.

Reply Obj. 1: It must be said, therefore, that usurious money does not have itself through the mode of a root unto the gain which is made from it, but only through the mode of matter. For a root somehow has the power of an active cause, inasmuch as it ministers nourishment to the whole plant; whence in human acts the will and intention are compared to the root, by which, if it should be perverse, the work shall be perverse. Yet this is not necessary in that which is material: for sometimes someone can use evil well.

Initial Thoughts:

- This argument reads the same as the Summa Theologica and the De Malo. It should be taken as Aquinas' most mature thought.
- We may see that Aquinas explicitly compares the two situations, a good not consumed and a good consumed in its use as between conceding the thing in a commodatum and a mutuum. The translation of the mutuum obscures this. The Latin text however clearly reflects the distinction.
- Some authors have made a great significance of Aquinas' use of "selling" with respect to the mutuum, as if he sees it as a sort of sale. Here we see Aquinas using the term for selling, but explicitly with respect to a rental, where a man sells the use of a thing. Hence, Aquinas uses the term in a very general sense, which significantly reduces the plausibility of seeing the mutuum as a sale.

Posted in [Quotes](#), [Research](#), [St. Thomas Aquinas](#), [Usury](#) | [Leave a reply](#)

Catena Aurea on Luke 6:34-35

Posted on [June 30, 2021](#)

Source: <https://aquinas.cc/la/en/~CaLuke.C6.L8.9>

34. And if you lend to them of whom you hope to receive, what thank have you? for sinners also lend to sinners, to receive as much again.

35. But love you your enemies, and do good, and lend, hoping for nothing again; and your reward shall be great, and you shall be the children of the Highest: for he is kind to the unthankful and to the evil.

GREG NYSS. But man ought to shun that baneful anxiety with which he seeks from the poor man increase of his money and gold, exacting a profit of barren metals. Hence he adds, And lend, hoping for nothing again; &c. If a man should call the harsh calculation of interest [fenorum], theft, or homicide, he will not err. For what is the difference, whether a man by digging under a wall become possessed of property, or possess it unlawfully by the compulsory rate of interest?

BASIL; Now this mode of avarice is rightly called in the Greek, from producing [tokos], because of the fruitfulness of the evil. Animals in course of time grow up and produce, but interest as soon as it is born begins to bring forth. Animals which bring forth most rapidly cease soonest from breeding, but the money of the avaricious goes on increasing with time. Animals when they transfer their bringing forth to their own young, themselves cease to breed, but the money of the covetous both produces an increase, and renews the capital. Touch not then the destructive monster. For what

advantage that the poverty of today is escaped, if it falls upon us repeatedly, and is increased? Reflect then how can you restore yourself? Whence shall your money be so multiplied as that it will partly relieve your want, partly refresh your capital, , and besides bring forth interest? But you say, How shall I get my living? I answer, work, serve, last of all, beg; any thing is more tolerable than borrowing upon interest. But you say, what is that lending to which the hope of repayment is not attached? Consider the excellence of the words, and you wilt admire the mercifulness of the author. When you are about to give to a poor man from regard to divine charity, it is both a lending and a gift; a gift indeed, because no return is hoped for; lending, because of the beneficence of God, who restores it in its turn. Hence it follows, And great shall be your reward. Do you not wish the Almighty to be bound to restore to you? Or, should He make some rich citizen your security, do you accept him, but reject God standing as security for the poor?

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The Church Fathers and Scripture

Posted on [June 30, 2021](#)

Moreover, the same sacred and holy Synod,—considering that no small utility may accrue to the Church of God, if it be made known which out of all the Latin editions, now in circulation, of the sacred books, is to be held as authentic,—ordains and declares, that the said old and vulgate edition, which, by the lengthened usage of so many years, has been approved of in the Church, be, in public lectures, disputations, sermons and expositions, held as authentic; and that no one is to dare, or presume to reject it under any pretext whatever.

*Furthermore, in order to restrain petulant spirits, **It decrees, that no one, relying on his own skill, shall,—in matters of faith, and of morals pertaining to the edification of Christian doctrine, —wresting the sacred Scripture to his own senses, presume to interpret the said sacred Scripture contrary to that sense which holy mother Church,—whose it is to judge of the true sense and interpretation of the holy Scriptures,—hath held and doth hold; or even contrary to the unanimous consent of the Fathers;** even though such interpretations were never (intended) to be at any time published. Contraveners shall be made known by their Ordinaries, and be punished with the penalties by law established.*

COUNCIL OF TRENT FOURTH SESSION

– [HTTPS://WWW.PAPALENCYCLICALS.NET/COUNCILS/TRENT/FOURTH-SESSION.HTM](https://www.papalencyclicals.net/COUNCILS/TRENT/FOURTH-SESSION.HTM)

*3. Likewise I accept sacred **scripture** according to that sense which holy mother church held and holds, since it is her right to judge of the true sense and interpretation of the holy scriptures; nor will I ever receive and interpret them except according to the unanimous consent of the fathers.*

FIRST VATICAN COUNCIL SESSION 2 PROFESSION OF FAITH

– [HTTPS://WWW.PAPALENCYCLICALS.NET/COUNCILS/ECUM20.HTM](https://www.papalencyclicals.net/COUNCILS/ECUM20.HTM)

*In consequence, it is **not permissible** for anyone to interpret holy scripture in a sense contrary to this [the interpretation held by holy mother church], or indeed against the unanimous consent of the fathers.*

FIRST VATICAN COUNCIL SESSION 3: DOGMATIC CONSTITUTION ON THE CATHOLIC FAITH, CHAPTER 2 ON REVELATION

– [HTTPS://WWW.PAPALENCYCLICALS.NET/COUNCILS/ECUM20.HTM](https://www.papalencyclicals.net/COUNCILS/ECUM20.HTM)

Posted in [Church Fathers](#), [Magisterium](#), [Research](#) | [Leave a reply](#)

Temporary Census and Distinction of Contracts

Posted on [June 22, 2021](#)

A commenter here has written a few times about his concerns around the temporary census. This is particularly because of the condemnation of the mutually redeemable, more specifically redeemable by the purchaser, census. *Cum Onus* makes it clear that this sort of agreement is condemned. One way of looking at this is that the census is a sale and the redemption by the purchaser compels the seller to buy it back come what may. The problem with the temporary census is that this sort of compulsion appears built in from the start and thus appears condemned by *Cum Onus*. However, Innocent II approves of the temporary census in his commentary on Canon Law. I would like to propose a way of resolving this and that is to distinguish the life and perpetual census qua sale and the temporary census qua sublease.

In his work on feudal bonds, [Shael Herman](#) compares the census to two different sorts of arrangements: a sale-leaseback and a sort of sublease. In the case of the life or perpetual census, the census seller sells the ownership of the land to the purchaser and the regular payments are for the usufruct. This is because he retains the use of the land. In addition to this is the option of the seller to buyback the land. This was a method for different institutions or persons to accumulate land and wealth, when they would otherwise would not be able to.

A distinct sort of contract would be the sort of sublease that Herman mentions. In this sort of contract the ownership of the land would not be transferred, but rather the usufruct. The buyer is not purchasing the ownership, but a long term usufruct with a lump sum payment. He then subleases that usufruct back to the seller for a stream of payments. This seems to be more consistent with De Lugo's defense as mentioned by Noonan, where a partial usufruct is purchased.

This would seem to make some sense of the temporary census as distinct from the life or perpetual census. The seller is not being compelled to purchase back the land, but rather the usufruct sold to the purchaser has an agreed upon duration. After the period is over, the usufruct is dissolved and the seller owns the land unburdened by the claim. This differs from the mutually redeemable census, because the seller is not being compelled to purchase the property back, because no property is sold. Indeed, it is rather the usufruct claim is limited. It is not necessarily that he is compelled to repurchase the land or usufruct, but that he is completing the (sub)-lease payments to the end of the contract.

The major weakness of this theory is that it has almost no historical backing. I haven't had much luck finding specific details about the temporary census and how it was effected beyond the limited discussion in Noonan.

Posted in [Uncategorized](#) | [4 Replies](#)

Lateran V does not define usury

Posted on [June 9, 2021](#)

1

I have occasionally heard that Lateran V proposes the following definition of usury: "when, from its use, a thing that produces nothing is applied to the acquiring of gain and profit without any work, any expense, or any risk." Indeed, in the index of my copy of Denzinger (Ignatius Press 2010), it states this as the definition of usury directing the reader to the passage from the 10th Session of the Fifth Lateran Council. However, reading the full context in which the definition is found should dissuade anyone from the belief that the definition is proposed by the Council.

(see <https://www.papalencyclicals.net/councils/ecum18.htm>)

The definition arises out the controversy concerning the Montes Pietatis, charitable lending organizations. The first part lays out the difficulties between those who oppose the Montes, those who support them and the need for the Council to settle the question. The next section explains the position of those doctors and theologians who argue that the Montes are usurious. This is followed by the position of those who support Montes. Finally, the Council declares the Montes as not usurious and excommunicates anyone who preaches against them.

The definition of usury appears in the middle of the section explaining the position of the doctors opposed to the Montes. A fair reading of the text gives the impression that the definition is proposed by those doctors – not the Council – to explain the usurious nature of the Montes. Moreover, since the Council ultimately decides against these doctors, it is even harder to attribute the Council’s authority to this definition.

Now that definition may or may not be consistent with what the Church teaches, but it appears mistaken to suggest that the definition has Magisterial approval or weight to it.

Posted in [Uncategorized](#) | [1 Reply](#)

The personal census and census of a person

Posted on [June 9, 2021](#)

Just a few thoughts on the personal census:

There is a distinction between the kind of census Nicholas talks about in *Sollicitudo* and other contracts referred to as personal census.

When Nicholas discusses the purported census, he always references some sort of property, namely good either physical, such as homes and farms, or financial, such as emoluments and incomes.

This differs from what I’ll call the census of a person, grounded, for example, in the future labor of the seller himself. What Nicholas discusses is still rooted in real property, while this is personally secured. The former is arguably not a *mutuum* whereas the latter manifestly is.

That doesn’t resolve the conflict between *Sollicitudo* and *Cum Onus*. Pius commands that the census be founded in an immovable good or good treated as immovable, whereas Nicholas appears to provide a broader permission. However, there appears a distinction between a census *personalis* and a census *personae* in terms of how property and persons are treated in the contract.

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Ambrose De Tobia 6

Posted on [June 8, 2021](#)

We accuse the debtor because he has acted somewhat imprudently, but nevertheless there is nothing wickeder than the usurers, who think that another’s loss is their gain, and regard as their own loss whatever is possessed by others. They lay snares for recent

heirs, they hunt out **rich young men** through their /p. 41/ friends, they attach themselves, pretending friendship with their father or grandfather; they wish to learn their private needs. If they find anything, they reproach the young man's timidity, they censure their modesty, because hope and trust had not been placed in them before. but if they strike upon no snares arising from anyone's necessity, they fabricate stories. They say a magnificent estate is for sale, a large house, they overstate the yield of the crops, they exaggerate the yearly income, they urge him to buy it. They act in like fashion extolling costly garments and magnificent ornaments. When he says that he has not the money, they press their own upon him saying, "Use it like our own. 24. You will make many times the price from the income of the possession you have bought, you will return what you owe." they hold out the estates of others to the young man that they may despoil him of his own. They stretch nets, and has soon as he has entered the space surrounded by its enclosing folds, they force him into the toils of obligation, the snares of usury. They seek to have mortgaged to themselves his ancestral residence, his father's tomb. The day for payment is set; the court action is not mentioned, when payment can be required. When they have rendered him sufficiently secure, suddenly they rush in and threaten him violently, and they fall upon him as he gives excuses, saying, "You have your estates, we do not have our money. We have given gold, we have a contract. For you the income of your crops comes in; for us, nothing is being added to our money. Excuses are idle, at least let the bond be renewed."

[HTTP://WWW.POVERTYSTUDIES.ORG/AMBROSE_DETobia_ZUCKER.PDF](http://WWW.POVERTYSTUDIES.ORG/AMBROSE_DETobia_ZUCKER.PDF)

I can no longer take seriously those who claim to have read the Fathers and say they only opposed usury against the poor and needy.

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SSPX and Usury

Posted on [July 26, 2021](#)

I don't have a dog in the SSPX disputes except I hope they will return to proper communion with the Catholic Church under The Vicar of Christ. Besides that someone had claimed that the SSPX were a bastion of traditional Catholic doctrine in our confused times. So in accord with this site, I wondered what they had to say about usury. It did not surprise me with its "traditional" ignorance of the tradition.

You may find some details

here: http://archives.sspcx.org/Catholic_FAQs/catholic_faqs_morality.htm#usuryasin

They provide a conventional reading of Aquinas' consumed in use, ignoring the mutuum. They reference authors who make unsustainable interpretations of Aquinas along these lines (De Malo q13,a4,ad15 anyone?) The author approves productive loans contrary to Vix Pervenit and sharing in the profits of borrower contrary to Aquinas Super Sent., lib. 3 d. 37 q. 1 a. 6 ad 4.

So, nothing new or interesting her. They follow the same dead tradition of the Late Scholastics ignoring (or ignorant about) the Living Tradition of the Magisterium.

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Ambrose and Usury against the Foreigner

Posted on [July 14, 2021](#)

1

Some authors hold that Ambrose admits that usury is permissible against foreigners or at least against those one has a right to war against. In this usury apologists hold that this Father did not hold usury to be intrinsically evil and admitted its liceity under at least some circumstances. As we've seen before, the text itself dissuades the careful reader from such an interpretation.

Here is the quote from Ambrose with some context:

*But perhaps you may say that it is written "to the stranger thou shalt lend and **do not consider what the Gospel says, which is fuller**, But meanwhile let us set this aside. Consider the words of the Law itself: "To thy brother," it says, "thou shalt not lend at usury; thou shalt exact of the stranger." Who then was the stranger except Amalech, except the Amorite, except the enemy? "There," it says, "demand usury." Upon him whom you rightly desire to harm, against whom weapons are lawfully carried, upon him usury is legally imposed. On him whom you cannot easily conquer in war, you can quickly take vengeance with the hundredth. From him exact usury whom it would not be a crime to kill. He fights without a weapon who demands usury; without a sword he revenges himself upon an enemy, who is an interest collector from his foe. Therefore **where there is the right of war, there also is the right of usury**. For every people which, first, is in the faith, then under Roman law, is your brother: "I will declare thy name to my brethren, in the midst of the church [ecclesiae] will I praise thee."*

DE TOBIA 15, 51. [HTTP://WWW.POVERTYSTUDIES.ORG/AMBROSE DETOBIA ZUCKER.PDF](http://www.povertyStudies.org/Ambrose_DeTobia_Zucker.pdf)

We see the context of this passage is that the Gospel is the fuller expression, that is to lend not expecting a return. Ambrose admits this, but says we will lay it aside to consider the disputed passage from Deuteronomy. On this alone, it is seen that Ambrose does not admit that usury is licit against one's enemy. He begins by admitting that this earlier expression is deficient or less full.

One manner of interpreting this is seen that Ambrose is explain how limited God's tolerance is in Deuteronomy. God does not tolerate usury against any foreigner, but only against the enemy and one against whom one has a right of war. It seems to me that Ambrose is responding to those who would take this tolerance as very expansive, but Ambrose shows how constrained it is. Usury is not tolerated against an other Roman citizen and only against enemies.

Now, the next point should utterly destroy the interpretation that Ambrose take the "right of war" usury as normative now. Prior to this he condemns the usurer for oppressing the Huns. He calls them a people making "war on all nations." They are in no way Roman citizens, Christians or anything other than enemies. Yet, he again denounces the usurer who "oppresses the barbarians by the terror of his cruelty." (*De Tobia* 11, 39) If one has a right of war against anyone it is the Huns and even these the usurer is condemned for his evil.

Therefore, if we take Ambrose in context and what he has already said, the *ius belli* doctrine of usury isn't normative for him. At best, it was part of God's tolerance at that time. This is indeed the consistent teaching of the Fathers and later Doctors.

Posted in [Church Fathers, Quotes, Research, Usury](#) | [1 Reply](#)

Fathers on Parable of Talents (Matt 25:14-30)

Posted on [July 7, 2021](#)

Source: <https://aquinas.cc/la/en/~CaMatt.C25.L2>

Greg. To hide one's talent in the earth is to devote the ability we have received to worldly business.

Origen Or otherwise; When you see one who has the power of teaching, and of benefitting souls, hiding this power, though he may have a certain religiousness of life, doubt not of such an one that he has received one talent and hides it in the earth.

Hilary Or, This servant who has received one talent and hid it in the earth is the people that continue in the Law, who through jealousy of the salvation of the Gentiles hide the talent they have received in the earth. For to hide a talent in the earth is to hide the glory of the new preaching through offense at the Passion of His Body. His coming to reckon with them is the assize of the day of judgment.

Greg., Hom. in Ev., ix The servant who would not trade with his talent returns to his Lord with words of excuse.

Jerome For truly that which is written, "To offer excuses excusing sins" (Ps. 141:4) happened to this servant, so that to slothfulness and idleness was added also the sin of pride. For he who ought to have honestly acknowledged his fault, and to have entreated the Master of the household, on the contrary cavils against him, and avers that he did it with provident design, lest while he sought to make profit he should hazard the capital.

Origen This servant seems to me to have been one of those who believe, but do not act honestly, concealing their faith, and doing every thing that they may not be known to be Christians. They who are such seem to me to have a fear of God, and to regard Him as austere and implacable. We indeed understand how the Lord reaps where He sowed not, because the righteous man sows in the Spirit, whereof he shall reap life eternal. Also He reaps where He sowed not, and gathers where he scattered not, because He counts as bestowed upon Himself all that is sown among the poor.

Jerome Also, by this which this servant dared to say, "Thou reapest where thou sowedst not," we understand that the Lord accepts the good life of the Gentiles and of the Philosophers.

Greg. But there are many within the Church of whom this servant is a type, who fear to set out on the path of a better life, and yet are not afraid to continue in carnal indolence; they esteem themselves sinners, and therefore tremble to take up the paths of holiness, but fearlessly remain in their own iniquities.

Hilary Or, By this servant is understood the Jewish people which continues in the Law, and says, I was "afraid of thee," as through fear of the old commandments abstaining from the exercise of evangelical liberty; and it says, "Lo, there is that is thine," as though it had continued in those things which the Lord commanded, when yet it knew that the fruits of righteousness should be reaped there, where the Law had not been

sown, and that there should be gathered from among the Gentiles some who were not scattered of the seed of Abraham.

Jerome But what he thought would be his excuse is turned into his condemnation. He calls him “wicked servant,” because he cavilled against his Lord; and “slothful,” because he would not double his talent; condemning his pride in the one, and his idleness in the other. If you knew me to be hard and austere, and to seek after other men’s goods, you should also have known that I exact with the more rigour that is mine own, and should have given my money to the bankers; for the Greek word here (αργυριον) means money. “The words of the Lord are pure words, silver tried in the fire.” (Ps 12:6) **The money, or silver, then are the preaching of the Gospel and the heavenly word;** which ought to be given to the bankers, that is, either to the other doctors, which the Apostles did when they ordained Priests and Bishops throughout the cities; or to all the believers, who can double the sum and restore it with usury by fulfilling in act what they have learned in word.

Greg., Hom. in Ev., ix, 4 So then we see as well the peril of the teachers if they withhold the Lord’s money, as that of the hearers from whom is exacted with usury that they have heard, namely, that from what they have heard they should strive to understand that they have not heard.

Origen The Lord did not allow that He was “a hard man” as the servant supposed, but He assented to all his other words. But He is indeed hard to those who abuse the mercy of God to suffer themselves to become remiss, and use it not to be converted.

Origen The Lord is able by the might of His divinity to take away his ability from the man who is slack to use it, and to give it to him who has improved his own.

Greg., Hom. in Ev., ix, 5 It might seem more seasonable to have given it rather to him who had two, than to him who had five. But as the five talents denote the knowledge of things without, the two understanding and action, he who had the two had more than he who had the five talents; this man with his five talents merited the administration of things without, but was yet without any understanding of things eternal. The one talent therefore, which we say signifies the intellect, ought to be given to him who had administered well the things without which he had received; the same we see happen every day in the Holy Church, that they who administer faithfully things without, are also mighty in the inward understanding.

Posted in [Church Fathers, Scripture](#) | [Leave a reply](#)

Greek Mutuum?

Posted on [July 7, 2021](#)

The ερανος [eranos] evolved into a loan from a social gathering among friends...Information about the legal formalities of the [eranos] is scant, and no evidence remains that provides a methodical explanation of the [eranos], but what can be uncovered is that the lender often received his money back through an installment plan, and the loan could be pressed for in court if necessary. The only interest paid was the gratitude of the debtor to the lender, and the lender hoped only to see a return of the capital.

BRENDA LLEWELLYN IHSEN, "‘‘THAT WHICH HAS BEEN WRUNG WITH TEARS’’: USURY, THE GREEK FATHERS, AND CATHOLIC TEACHING”, READING PATRISTIC TEXTS ON SOCIAL ETHICS, 133N37.

What we learn here:

1. Always read the footnotes. Always.
2. The eranos appears to be a loan grounded in friendship just as the mutuum. It is essentially an act of charity.
3. This provides an avenue into the Greek philosopher and Fathers that appears analogous to the mutuum.

Posted in [Church Fathers](#), [Quotes](#), [Research](#), [Usury](#) | [Leave a reply](#)

Ihsen Against Cleary

Posted on [July 6, 2021](#)

Patrick Cleary notes that Bishop Sidonius Apollinaris of Clermont might have recognized the right of a cleric to demand usury, but I am not convinced that this is what the bishop is suggesting; Cleary, The Church and Usury, 57. Cleary also mentions St. Gregory of Tours, who relates the tale of Desideratus, Bishop of Verdun. The bishop asked for a loan from King Theudebert and promised to repay it with interest...However, I disagree also here with Cleary, who states that this tale indicates that neither ‘‘his lordship nor Gregory thought it unreasonable that usury should be paid in the case.’’ Cleary, The Church and Usury, 57. I would point out that Gregory’s text does not suggest any such thing, as we have no indication about what any of the parties thought... Worth noting, in the end King Theudebert repudiated not just the interest, but the principle as well, which indicates to me that the king realized that taking usury from a bishop who borrowed money to get an entire community out of poverty seems inappropriate. Gregory of Tours, History of the Franks, 191.

BRENDA LLEWELLYN IHSEN, "‘‘THAT WHICH HAS BEEN WRUNG WITH TEARS’’: USURY, THE GREEK FATHERS, AND CATHOLIC TEACHING”, READING PATRISTIC TEXTS ON SOCIAL ETHICS, 129N16.

Posted in [Church Fathers](#), [Research](#), [Usury](#) | [Leave a reply](#)

Clement of Alexandria On Usury

Posted on [July 6, 2021](#)

Respecting imparting and communicating, though much might be said, let it suffice to remark that the law prohibits a brother from taking usury: designating as a brother not only him who is born of the same parents, but also one of the same race and sentiments, and a participator in the same Word: deeming it right not to take usury for money, but with open hands and heart to bestow on those who need.

[HTTPS://WWW.GOOGLE.COM/BOOKS/EDITION/THE WRITINGS OF CLEMENT OF ALEXANDRIA T/H/COVWWSVYQCMC?HL=EN&GBPV=1&DQ=CLEMENT+OF+ALEXANDRIA+PARTICIPATORS+IN+THE+WORD&PG=PA50&PRINTSEC=FRONTCOVER](https://www.google.com/books/edition/The_Writings_of_Clement_of_Alexandria_T/H/COVWWSVYQCMC?hl=en&gbpv=1&dq=CLEMENT+OF+ALEXANDRIA+PARTICIPATORS+IN+THE+WORD&pg=PA50&printsec=frontcover)

Participator in the same Word may well refer to Christians exclusively or to all men generally, because all men participate in the Logos as their source and end. Clement goes on to remark that ‘‘You see how the law proclaims at once the righteousness and the goodness of God, who dispenses food to **all ungrudgingly**.’’ It seems arguable based on these passages that Clement may have been speaking against usury generally. A more thorough reading is necessary.

Posted in [Church Fathers](#), [Usury](#) | [Leave a reply](#)

Gregory of Nyssa and Usury

Posted on [July 6, 2021](#)

*Since you are composed of copper and gold, neither seek usury, **force poverty upon those who are rich**, nor be greedy to persons asking for money. Are you not aware that the need for a loan is a request for mercy cheerfully bestowed?...**Condemn all money lenders** because they lack healing through the Law, prophets and evangelists.*

https://www.documentacatholicaomnia.eu/04z/z_0330-0395_gregorius_nyssenius_against_those_who_practice_usury_en.doc.html

It appears that more and more as one reads the Fathers, one gets the impression that the condemnation is broader than most authors are willing to admit. At the very least, the claim that the Fathers only rejected usury as oppression against poor crumbles in the face of the actual texts.

Posted in [Church Fathers, Usury](#) | [Leave a reply](#)

Solon and Personally Secured Debt

Posted on [July 6, 2021](#)

[2](#)

*As soon as he was at the head of affairs, Solon liberated the people once and for all, by **prohibiting all loans on the security of the debtor's person**: and in addition he made laws by which he cancelled all debts, public and private. (Part 6)*

http://classics.mit.edu/aristotle/athenian_const.1.1.html

Posted in [Uncategorized](#) | [2 Replies](#)

Hungarian Loans for Babies – Redux

Posted on [August 22, 2021](#)

With the recent interest in Hungary as an ideal “Catholic” or “Christian” or “Western” state, I began thinking about [their policy](#) of granting [loans](#) on the condition of the borrowers having babies within a certain period. I still believe this is a form of prostitution, but I want to lay out more clearly why that is the case.

Consider prostitution in general. The John pays for sex with the prostitute. There are different evils involved. First, there is the fornication, which is evil in itself. However, there is another evil of buying and selling one’s body for money. That is the actual exchange of money to have sex.

Now consider another situation, where a person pays a prostitute to have sex with a different person. This is also still gravely evil and problematic, but the payer is once removed. His participation in the paying for the prostitution is still evil.

Now one step further. Let us remove the fornication. A man pays a wife to have sex with her husband. Perhaps they would and perhaps they wouldn’t. However, the chosen behavior, the moral object, they will is engaging in sex for money. They choose to have sex for money in return. The moral object is prostitution, even if fornication is not involved.

Now that we’ve reach this level, it should be easy to see the problem with the Hungarian policy. Suppose instead of paying the prostitutes outright, the payer grants you a usurious loan funded by a commercial bank. The condition is that the prostitutes must have sex some number of times over some period of time. As long as the prostitutes do this, the payer will subsidize the usurious loan. If the prostitutes fail, then the prostitutes are obligated to pay on the usurious loan.

The next step is clear. Not only do the prostitutes need to have sex, but they need to produce babies. This reaches a new level of moral abhorrence. The moral object the prostitutes are willing is making children for money. Not only are they prostitutes, they are reduced to baby factory equipment. The lender facilitates this degradation by treating these humans in such a way. The anti-human indignities of this arrangement are hardly Christian, though it may be Western in the sense of reestablishing the humiliating and degrading institution of slavery.

I still think that this sort of thinking is related to the mindset of usury. Usury, in a manner, treats human persons as property from which a profit can be derived. In the case of the Hungarian loans, persons are treated as equipment for producing babies, equipment which can be rented. If the equipment fails, the slave master can demand back his payment with profits besides. The longer usury goes unchallenged the more slavery will return in new and “acceptable” forms.

Posted in [Usury](#) | Tagged [Hungary](#), [Slavery](#), [Usury](#) | [Leave a reply](#)

Pignus, Mutuum and Periculum Sortis

Posted on [August 21, 2021](#)

A couple years ago when I was writing my (now delayed) essay on usury, I was confronted with the pignus. I had assumed at the time that adding a pignus to a mutuum essentially altered the contract. Given the tradition, I now know that is an untenable position.

The argument that gave me pause was from a Late Scholastic. He argued in favor of periculum sortis by noting that everyone agrees that adding a pignus to a mutuum is licit. The associated risk can be priced and so if a pignus is excluded the lender can charge that additional price.

With a better grasp of usury, it seems that this argument is presumptuously in favor of the lender. We know from the tradition that the fruits of a pignus should be counted against the principal. Aquinas asserts that a pignus of money is a sort of rental. In this sense, in giving even a sealed bag of money should count against the principal.

Along these lines, I would argue that the periculum sortis excuse fails. In a bare mutuum, the borrower owes the same amount. If the lender demands some collateral or pignus on the mutuum, this should be counted against the principal. For example, if you lend \$100 and insist on some collateral to cover it and the price to insure \$100 good is \$5, then the borrower is obligated only to return \$95.

While I argued against periculum sortis generally, this was a particular argument I couldn't quite handle. However, I think now that the Late Scholastic argument certainly fails.

Posted in [Uncategorized](#) | [Leave a reply](#)

Vix Pervenit is Infallible

Posted on [January 12, 2022](#)

The question of the infallibility of *Vix Pervenit* has been challenged and specifically rejected by no less than [Fr. Vermeersch](#). However, a recent article in *Nova et Vetera* gives new life to the question. In [Disputed Questions on Papal Infallibility](#), Dr. John Joy clarifies some questions around the problem of infallibility. He notes there are three essential conditions for infallibility:

On the contrary, Bishop Vincent Ferrer Gasser, in his official relation delivered at the First Vatican Council, in order to explain the intended sense of the definition of papal infallibility, enumerates three essential conditions that restrict the infallibility of the pope: "The infallibility of the Roman Pontiff is restricted by reason of the subject, that is when the pope, constituted in the chair of Peter, the center of the Church, speaks as universal teacher and supreme judge; it is restricted by reason of the object, i.e., when treating of matters of faith and morals; and by reason of the act itself, i.e., when the Pope defines what must be believed or rejected by all the faithful."

It is first clear that Pope Benedict XIV is speaking as teacher and judge as he "approve[s] and confirm[s] whatever is contained in the opinions" expressed in the encyclical. Moreover, the object is clearly a question of morals as it pertains to the evil of usury. Finally, it seems he meant this as to be believed by all the faithful as he sought a "fixed teaching on usury, since the opinions recently spread abroad seemed to contradict the Church's doctrine." This is further confirmed by what he intended by the encyclical [as seen before](#).

Further, returning to Vermeersch, his rejection of the infallibility of *Vix Pervenit* rests on the problem that it was only sent to the bishops of Italy. To this, Dr. Joy responds in "Article 7: Whether the Pope Is Able to Speak Infallibly without Explicitly Addressing the Universal Church?":

On the contrary, according to Cardinal Billot: "It is not necessary for a papal document to be materially directed to all the bishops or faithful; it is enough that it pertains to the deposit of faith and there is present the manifest intention of putting an end to doubt by a definitive sentence not subject to further determination."

Hence, the question of sending it only to the Italian bishops is not an issue. Rather it is clear from the encyclical and his expressed intent that he meant this as a teaching for the Universal Church and to settle the question of usury.

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Aquinas and Equality in Exchange

Posted on [February 26, 2022](#)

Therefore, it is reasonable to measure all things by one norm, as has been pointed out previously. This norm in reality is demand, which connects all things. If men were not in need, there would be no exchange, or if they did not have a similar demand, exchange would not be the same. Money originated by agreement on account of necessity

exchange. Hence, money (numisma) has the name because it is a norm not by nature, but by law (nomos). We have the power to change money and to make it useless. [981]
[...]

981. At therefore, it is (1133a25), he indicates the nature of this commensuration made by means of money. He states that, for this reason, it is possible to equate things, because all things can be measured by some one standard, as was pointed out [957]. But this one standard that truly measures all things is demand. This includes all commutable things, since everything has a reference to human need. Articles are not valued according to the dignity of their nature, otherwise a mouse, an animal endowed with sense, should be of greater value than a pearl, a thing without life. But they are priced according as man stands in need of them for his own use.

ST. THOMAS AQUINAS, COMMENTARY ON THE NICOMACHEAN ETHICS, BK. 5, L. 9
[HTTPS://AQUINAS.CC/LA/EN/~ETH.BK5.L9](https://aquinas.cc/LA/EN/~ETH.BK5.L9)

Obj. 3: Further, the thing sold is rendered defective by lacking a fitting quality. But in order to know the quality of a thing, much knowledge is required that is lacking in most buyers. Therefore a sale is not rendered unlawful by a fault (in the thing sold).

[...]

Reply Obj. 3: As Augustine says (De Civ. Dei xi, 16) the price of things salable does not depend on their degree of nature, since at times a horse fetches a higher price than a slave; but it depends on their usefulness to man. Hence it is not necessary for the seller or buyer to be cognizant of the hidden qualities of the thing sold, but only of such as render the thing adapted to man's use, for instance, that the horse be strong, run well and so forth. Such qualities the seller and buyer can easily discover.

ST. THOMAS AQUINAS, SUMMA THEOLOGICA II-II, Q. 77, A.2, AD. 3
[HTTPS://AQUINAS.CC/LA/EN/~ST.II-II.Q77.A2.REP3](https://aquinas.cc/LA/EN/~ST.II-II.Q77.A2.REP3)

Posted in [Aristotle](#), [Economics](#), [Quotes](#), [Research](#), [St. Thomas Aquinas](#) | [Leave a reply](#)

Theft, Property and MacIntyre

Posted on [February 26, 2022](#)

Consider the act of theft. "The primary and decisive element for moral judgement is the object of the human act, which establishes whether it is capable of being ordered to the good and ultimate end, which is God. ([Veritatis Splendor] 79.2). St. Thomas first identifies the object of the act of theft as to take possession of what is the property of another where what is taken is a thing possessed (and not the other's person or some part of it) and to do so secretly (this distinguishes furtum, theft, from rapina, robbery). But a right understanding of what the precept of the natural law forbidding theft requires is therefore impossible without a right understanding of the concept of property. To own something is not, as in some views, to have inviolable rights over it. Owners hold their property as stewards for those in need, and in cases of extreme and immediate need, need which can only be met by taking what is otherwise to be regarded as your property, I do no wrong in taking what, because of that need, has become my property as much as yours, common property, and my taking is not rightly to be called theft or robbery, even if you have not consented to it ([Summa Theologica] II-II, q. 66, a. 7).

MACINTYRE, ALASDAIR, "HOW CAN WE LEARN WHAT VERITATIS SPLENDOR HAS TO TEACH?", VERITATIS SPLENDOR AND THE RENEWAL OF MORAL THEOLOGY: STUDIES OF TEN OUTSTANDING SCHOLARS, 81

Posted in [Books](#), [Quotes](#) | [Leave a reply](#)

Aristotle and Usury – Jeremy Bell

Posted on [February 9, 2022](#)

Noonan apparently attributes to Aquinas the view that usury is objectionable on account of the “sterility” of money because, when responding to an objection in question 78 of ST II-II, he cites with approval Aristotle’s statement that “to make money by usury is exceedingly unnatural.” The statement occurs, is at least one source for the medieval view that it is unnatural for money, a “sterile” good, to “breed” its like. However, Aristotle himself does not make precisely this claim, the meaning of which is in any case not obvious. What Aquinas takes Aristotle to mean when he says that usury is “exceedingly unnatural” is also not obvious, since Aquinas merely quotes this statement, approvingly but without comment. Aristotle’s actual objection to usury seems to be contained in his statement that usury is “most reasonably hated” because the usurer’s gains “derive from money itself and not from that for which it was supplied.” Money “came into being for the sake of exchange,” but the usurer does not exchange it for other goods and thereby increase his wealth; he rather increases his wealth by exchanging less money for more. Aristotle concludes that this kind of money-making is “exceedingly unnatural.”

THOMAS AQUINAS, JOHN NOONAN, AND THE USURY PROHIBITION BY JEREMY BELL, PG. 177 ([HTTPS://STPAULCENTER.COM/05-NV-19-2-BELL/](https://stpaulcenter.com/05-nv-19-2-bell/))

Posted in [Aristotle](#), [Articles](#), [Usury](#) | [Leave a reply](#)

Utility

Posted on [March 4, 2022](#)

Things possess inherent qualities. These qualities can achieve certain ends. A piece of wood that is set ablaze can burn for a long time, releasing a good measure of heat. A piece of uranium under certain circumstances can also release a great deal of heat. The inherent difference between the two regards the particular qualities that allow each to be heat producing. However, as concerns their historical use, wood has been used by humans for thousands if not hundreds of thousands of years, whereas uranium has only been used for less than a century.

Utility is usefulness to human beings. Humans have particular ends in mind and have the capacity to make use of things to achieve those ends. Wood and uranium both have inherent qualities that produce heat, which is a particular end humans frequently seek. The difference is that wood has been actually useful for many years, whereas uranium has only been potentially useful. Let me explain.

Utility is something that is superadded to a thing by humans ability to make use of it to achieve a particular end. That end is achievable precisely because of the qualities inherent in the thing, but it is not yet useful, possessing utility, until men can actually make use of it. So, all things are potentially useful in so far as they possess qualities to achieve certain ends, but only those things men can actually use are actually useful, possessing actual utility.

In this sense, utility only adds to the thing a relation to man to achieve a particular end. The thing as it exists can achieve that end. If it were not so, it would not even be potentially useful, with respect to that end. Hence, utility, potential or actual, is not something inherent in the thing, but it is a relation between the qualities that achieve an end and the intention to achieve an end of a man.

Posted in [Musing](#) | [Leave a reply](#)

Translation Help

Posted on [April 24, 2022](#)

I've got some help translating the most relevant papal bulls for the assertion that the mutuum is a personally secured loan. Here are the links to where I was able to find the texts.

Detestabilis – Sixtus V: [http://www.documentacatholicaomnia.eu/01p/1585-1590,SS_Sixtus_V,_Bullarium\(Cherubini_vol_2_ff_490-696\),_LT.pdf](http://www.documentacatholicaomnia.eu/01p/1585-1590,SS_Sixtus_V,_Bullarium(Cherubini_vol_2_ff_490-696),_LT.pdf)

Sollicitudo – Nicholas

V: https://www.google.com/books/edition/Collectio_diversarum_constitutionum_et_l/YO5KAAAACAAJ?hl=en&gbpv=1

Cum Onus – St. Pius V: [http://www.documentacatholicaomnia.eu/01p/1566-1572,SS_Pius_V,_Bullarium\(Cherubini_vol_2_ff_176-361\),_LT.pdf](http://www.documentacatholicaomnia.eu/01p/1566-1572,SS_Pius_V,_Bullarium(Cherubini_vol_2_ff_176-361),_LT.pdf)

Regimini Universalis – Martin

V: http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6029936_002/pages/ldpd_6029936_002_00000677.html?toggle=image&menu=maximize&top=&left=

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Collateralized Loans, Mutuum and Woodworking

Posted on [May 19, 2022](#)

7

In woodworking there are several types of wood that you can work with. You can use plywood, which generally is just some very thin sheets of pine wood glued together. You can upgrade this and use birch plywood, which is just pine plywood with a thin layer of birch ply on the top. It might be covered with birch wood, but we all know that the core of it is pine. Finally, you might go all the way to use solid birch wood. At this point, you've achieved a whole new kind of wood and left the pine behind.

Now, the nature of a contract is determined by the terms that constitute the agreement. In the mutuum, once the property has been delivered the sole obligation rests on the borrower to return the good in kind. The borrower is authorized to spend or otherwise consume the good and so there is no property securing the loan itself. The borrower personally guarantees the return of the principal. This is like the pine plywood.

This mutuum can be collateralized in different ways. If the borrower agrees to attach a pignus to the mutuum, then the lender has a claim against the pledged property. However, if the borrower still personally guarantees the loan, then it remains a mutuum. The mutuum is secured, but should the security fails the borrower remains personally liable for the return. We have reach birch plywood, there may be a layer of security on top of the loan, but terms constituting the core of the agreement remain.

Finally, if the loan is full secured by some good, then we have reach full birch wood level. In this case, the personal obligation has been entirely removed. This is an essential change to the nature of the terms and thus the contract. This sort of agreement is not a mutuum, just like the birch board is not pine.

Posted in [Uncategorized](#) | [7 Replies](#)

[Digest of Justinian](#)

Posted on [May 4, 2022](#)

2

English (mutuum): https://droitromain.univ-grenoble-alpes.fr/Anglica/D12_Scott.htm

Latin (mutuum): <https://droitromain.univ-grenoble-alpes.fr/Corpus/d-12.htm#1>

English (usufruct): https://droitromain.univ-grenoble-alpes.fr/Anglica/D7_Scott.htm

Posted in [Links](#), [Research](#), [Usury](#) | [2 Replies](#)

[Biblical Condemnation to Roman Law](#)

Posted on [June 6, 2022](#)

One of the questions worth asking is how was the line drawn from the Biblical condemnation of *masah* and *nesek* to the Roman Law *usura* and *foenus*. It is after all not immediately obvious that what the Scriptures condemn is equivalent to the Roman Law concept of usury. Moreover, the Scriptures give no clear contractual terms of what it means by lending, while the Roman Law lays out an understanding of different sorts of lending, such as *mutuum*, *commodatum* and *locatio*, but usury occurs on in *mutuum* lending.

The term *usura* appears to be used as early as [Tertullian](#), but it is not clear that he is referring to the Roman Law concept. He does not appear to use any specific word for loan, even though the [translator](#) reads various declensions of “faenus” as “loan.”

However, the connection between the Hebrew and Latin terms appears to be at least as early as the 2nd century.

The real important connection comes with St. Ambrose for a couple of reasons. First, he is one of the few Church Fathers to dedicate a long treatise, the [De Tobia](#), to the evil of usury. Second, he [studied for a civil career in Rome](#) and was a [governor near Milan](#) before becoming a bishop. We see this play out in his *De Tobia* because as he condemns usurers he mentions several specific contracts from Roman Law including the pignus, fiducia, and others. Moreover, whenever he names the loan contract, he always uses the *mutuum*. This then is one of the clearest points of connection between the Biblical condemnation and the technical Roman Law understanding of usury. However, with this early connection, it is not clear that St. Ambrose’s understand was transmitted onward. With the resurgence of the study of Roman Law in the [12th](#)

[century](#) we see the [resurgence](#) of usury as grounded in the *mutuum*. Here St. Ambrose appears only with the difficulty of his infamous “where there is just war, there is just usury” quote entered into canon law. However, as [I’ve discussed before](#), taken in context this provides little difficulty.

Along these line the Scholastics pick up this same teaching. We see from Sts. Albert, Bonaventure, and Aquinas through to St. Alphonsus Liguori, that the Biblical condemnation of usury is taken as equivalent to the taking profit from a *mutuum* contract.

It would be interesting to study the period between St. Ambrose in the fourth century to the canonists in the 12th century. However, even if this teaching was lost along the way, it is clear that he is one of the earliest authoritative witnesses to the connection between the Biblical injunction against *masah* and the Roman Law concept of *usura* in the *mutuum*.

Posted in [Canon Law](#), [Church Fathers](#), [Uncategorized](#), [Usury](#) | [Leave a reply](#)

John Calvin on Usury

Posted on [June 6, 2022](#)

[Commentary On Ezekiel](#)

[Commentary on Psalm 15](#)

[De Usuris Responsum](#)

Posted in [Uncategorized](#) | [Leave a reply](#)

Inflation and Usury

Posted on [August 26, 2022](#)

4

With Biden’s new debt forgiveness program starting people are starting to think again about the problem of usury. Along with this we continue to experience rampant inflation, which leads some people to find a connection between usury and inflation. People will often attempt to use inflation as an excuse for usury, but this, more often than not, arises from a naïve understanding of usury and inflation.

The question of usury centers around the problem of a title or claim to something over the principal. The traditional teaching is that there is no intrinsic title, that is the lender cannot claim something over the principal from the very act of lending. However, there is a long tradition of what is called extrinsic titles. The idea here is that it is not usury to receive something over the principal if the lender has a title extrinsic to the loan. This is where inflation comes in.

Inflation is used as an example of an extrinsic title by more several authors. Most assert that an equality of value between what is given and what is received allows the lender to receive more in quantity while retaining an equality of value and justice. However, there are a few problems with this manner of thinking.

First, this argument is for an intrinsic title to usury and not an extrinsic title. The claim here is that the intrinsic justice of equality in contracts allows for the lender to receive more. But this is to insist that the lender has an intrinsic title, that is from the very act of lending something that varies in value, the lender can demand more than he gave.

Here the “extrinsic” is only considered as extrinsic circumstances surrounding the loan and not an extrinsic title. The lender does not have a title that runs parallel to the loan, but his title is intrinsic and it is only a matter of circumstances that he receives more.

Second, we need to answer the question of why value is the measure of equality. In the case of a sale, we talk about just price and an equality of value. This is because we are dealing with diverse things and we need to find a way of equating them. Aristotle suggests something like value so that we can equate how many shoes is equal to a house. However, in the case of usury, we are deal with a loan of a good returned in kind, that is equality of the same sort of thing. There is no need to find some other measure, because two things of the same kind are equal apart from any other extrinsic measure, such as value.

Third, people who reference inflation often don’t know what it really means. Inflation is not as simple the value of a good going down. Inflation involves looking at the exchange ratios between goods. For example, the exchange ratio between a year of college and dollars has skyrocketed in the past decades, but the same ratio with computers and dollars has plummeted. The consumer price index is a statistical composite of a more or less arbitrary basket of goods to give a measure of inflation.

Inflation in its most basic sense though is a matter of these exchange ratios. These exchange ratios presume a relation between the good you possess and some market(s) that are more or less open to exchanging for other goods. The suggestion that inflation constitutes a title to more than what was given in the loan, would have to demonstrate what sort of title a lender has over these relations or against these markets. Really, there is no reason to believe that someone has a claim to the same exchange ratios regardless of what happens.

One could say more and I address this topic more in my forthcoming essay in *Restoring Ancient Beauty*. Suffice it to say that inflation does not grant someone a title to more than the principal in a loan.

Posted in [Uncategorized](#) | [4 Replies](#)

Savings Accounts and Usury

Posted on [September 23, 2022](#)

I was asked to consider the question of the morality of investing in a savings account, at least with respect to usury. In the first place, we must admit that to choose to engage in usury itself is evil. One must never do so. However, the issue here is whether one can invest in a company that engages in usury, which resolves into the broader moral question of cooperation with evil.

Without getting into all of the technical distinctions,[1] we can consider a few situations that St. Thomas Aquinas treats in ST II-II, q. 78, a. 4, ad. 3. [2] There he considers two different sets of situations, the first being evil and the second being licit.

In the first case, he considers a man who deposits money with a usurer who intends to profit thereby. In this case, the cooperator formally intends the usury and thus commit evil himself; he chooses the evil moral object. This is because he chooses to deposit the money with the intention of receiving profit from the usurious activity. Analogously with a savings account, to intend that the bank engage in usury with the invested money would be to intend usury itself.

The second evil scenario Aquinas considers is if the usurer does not have the means to engage in usurious loans. By depositing money with him, one gives him the material means of engaging in usury. He is only able to practice his evil trade, because of the depositor's money. Hence, while the depositor may not intend the usury directly, he provides necessary means for achieving the evil end. This case is not typical for modern banks. The assets of the bank are typically so large, that most consumer savings account, taken individually, are negligible in the banks operations.

On the other hand, Aquinas treats a licit case. If the usurer has other means of practicing usury and one deposits money with him, then it may be licit as long as the depositor has a good end in view, such as keeping his money safe. This seems to be most often the case with savings accounts. Banks have the significant means and one can choose to use the accounts for licit means. Indeed, we often use these accounts to protect our money and engage in most financial transactions.

There is some difficulty it seems on the profit that a person receives on a savings account. While he may not will the usury directly, he does still receive some profits. Aquinas considers a simple case where the depositor cooperates with someone engaged solely in usury. Whereas in a bank, there are both usurious and non-usurious business activities and the depositor.

For example, on US Bank's balance sheet [3] about a third of its reported assets in 2021 were either consumer loans, which are typically usurious, or mortgages, which may be usurious depending on the terms, with about 50% being all sorts of loans. On their income sheet a little under 50% of their revenue comes from interest on loans, which means – to a first order approximation – about 30% of their total revenue comes from potentially usurious loans. The remainder is coming from interest on commercial loans, other investment income, fees, security sales and other income.

Now let us consider in what manner the savings accounts are secured, that is from a practical perspective where is the interest coming from. A savings account is not simply putting money into a pile from which you can draw from but it is an investment in the business. It is a security, similar to a stock or bond. It gives you certain claims, titles or rights against the bank, the most important being demand withdrawals. Since this is a security and a liability on the bank's balance sheet they have to secure it with some assets.

Banks are required to hold some level of cash or cash-equivalent reserves along with short-term assets. This is to ensure that the bank can cover withdrawals. I'm not extremely familiar with banking practices, but these reserves are not likely to be just sitting in a pile. They are likely invested in very short term assets that provide some level of income, even if it is merely at the Fed's overnight rates. This income will be

from asset recourse investments and not usurious. It seems likely this income will be used to cover at least some of the payments made on savings accounts. So, there seems to be an additional remoteness to usurious practices of a bank in savings accounts.

Hence, while a savings account is a sort of investment in a business that engages in usurious practices along with licit business, the remoteness of participation in the usurious dealings is sufficiently remote given the intention not to profit from the usury but from other licit business. This is a prudential judgement and so I don't think constitutes an absolute judgement on the moral quality of saving accounts generally.

In sum, given what Aquinas says about depositing with a usurer, I think that it is licit to invest in a savings account. The limitations on this would be that the savings account is contracted for a good end, namely keeping your property safe or easily and effectively managing your household. Moreover, one ought not to intend to invest in a business for the purpose of profiting from the usury, but rather from licit business.

[1] This has an excellent breakdown of the ethical dimensions and technical distinctions of choosing good and evil and legitimate cooperation with evil in Chapter 2: <https://researchonline.nd.edu.au/cgi/viewcontent.cgi?article=1019&context=these>
[S](#)

[2] See <https://aquinas.cc/la/en/~ST.II-II.Q78.A4.Rep3>

[3] See <https://finance.yahoo.com/quote/USB/balance-sheet?p=USB>

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Dry Exchange Contracts

Posted on [March 30, 2023](#)

[Genoa] April 19 [1188]

We, Girardo de Valle and Tommaso de Valle, acknowledge that we have received from you, Beltrame Bertaldo, banker, a number of [deniers] for which [we promise to pay] £ 4 Provisine to you or your accredited messenger at the next May fair of Provins. And if we do not do this, we will pay you on our next return from the same fair for every 12 [deniers] 16 [deniers] Genoese until you are fully paid. Otherwise we promise, in making the stipulation, the penalty of the double, and in addition [we promise] to restore to you the entire expense you may have incurred [in] [trusting] in regard to the debt your word without oath. And for this we pledge to you all our goods as security, waiving, etc. Witnesses: Abortateur of Troyes; Bertramo, son of Arduino of Comazzo. In the shop of the Malocelli,¹⁴ on April 19, between prime and terce.

Genoa, July 1, 1292

I, Bonifacino Malocello, acknowledge to you, Guglielmo of Augsburg, that I have had and have received from you £ 72 Genoese, waiving the promise that the money has not been had and received in cash, and every loan. And in consideration of these [goods], which are well worth that sum, I promise to give and to pay you or your messenger, personally or by my messenger, whenever you wish, by reason of exchange (*nomine*

150 gold deniers Genoese of good and lawful weight in Tabriz—those [coins] which are worth 10 [silver] shillings Genoese apiece—coins,¹⁷ current and acceptable in said place. And to that place we are about to go, I and you, God willing. And if perchance we are not able to go to the aforesaid place because the caravans¹⁸ are not going to Tabriz at the time you disembark at Trebizond, I promise and agree to give and pay you the said debt at Trebizond whenever you wish.¹⁹ And if I do not pay as stated above, I promise and agree to give and pay you in the city of Constantinople, for every gold denier Genoese of said sum [repaid] 12 shillings Genoese within the next eight months. Otherwise, I will not be bound.

Done in Genoa in front of the shop of the Malocelli, July 1, 1291, 10th ides, 1st terce, fourth indiction. Witnesses: Nicola Lercari and Leonardo da Vinci, shoemaker.

https://archive.org/details/medievaltradeinm0000unse_n4o3/page/166/mode/1up?view=theater

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Commenda Contract – 1073

Posted on [March 30, 2023](#)

In the year. . . 1073, in the month of August. . . I, Giovanni Lissado of Luprio, together with my heirs, have received in partnership from you, Sevasto Orefice, son of Ser Trudimondo, and from your heirs, the amount of ?200 [Venetian]. And I myself have invested ?100 in it. And with this capital we have acquired two shares in the ship of which Gosmiro da Molino is captain. And I am under obligation to bring all of this with me on a commercial voyage to Thebes [in Greece] in the ship in which the aforesaid Molino sails as captain. Indeed, by this agreement and understanding of ours I promise to put to work this entire sum and to strive the best way I can. Then, if the capital is preserved, we are to divide whatever profit the Lord may grant us from it by exact halves, without fraud and evil device. And whatever I can gain with those goods from any source, I am under obligation to invest all of it in the partnership. And if all these goods are lost because of the sea or of people [pirates], and this is proved—may this be averted — neither party ought to ask any of them from the other. If, however, some of them remain, in proportion as we invested so shall we share. Let this partnership exist between us so long as our wills are fully agreed.

But if I do not observe everything just as is stated above, I together with my heirs then promise to give and to return to you and your heirs everything in the double, both capital and profit, out of my land and my house or out of anything that I am known to have in this world. [signed by Lissado, two witnesses, the ship captain, and the clergyman who acted as notary]

Source: Robert S. Lopez and Irving W. Raymond, eds., *Medieval Trade in the Mediterranean World: Illustrative Documents* (Cambridge, U. K.: Cambridge University Press, 1955), 176-177.

https://archive.org/details/medievaltradeinm0000unse_n4o3

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Various Resources on Buying Low and Selling High

Posted on [March 25, 2023](#)

Wim Broekaert, "Joining Forces. Commercial Partnerships or Societates in the Early Roman Empire" in *Historia: Zeitschrift Für Alte Geschichte* vol. 61, no. 2 (2012) <http://www.jstor.org/stable/23264994>
Shows the presence of silent partnerships in early Rome

John H Munro, *The Late-Medieval origins of the Modern Financial Revolution: Overcoming Impediments from Church and State*, (Toronto: University of Toronto, 2003) <https://www.economics.utoronto.ca/public/workingPapers/UT-ECIPA-MUNRO-01-02.pdf>

Working paper by expert on medieval census contract. Shows the development of secondary markets in census contracts and Italian forced loans.

Alexander, *Summa Universa Theologica* III, q. 50, mem. 1, rep. https://archive.org/details/bub_gb_eMEVJD1M8KsC
Alexander of Hales' Summa. This section discusses the morality of ethics. He specifies 6 circumstances for licit trading. He focuses on intention in interpreting pseudo-Chrysostom, including labor, risk and care as things to consider but are not included in pseudo-Chrysostom. Notably is disputed whether the Summa is Alexander's work, his thoughts from another or attributed to him.

Odd Langholm, "Monopoly and Market Irregularities in Medieval Economic Thought: Traditions and Texts to A.D. 1500," *Journal of the History of Economic Thought*, vol 28, n. 4: Dec 2006, 403.

Translation of part of the text from Alexander's Summa on licit trading.

Jose Luis Cendejas Bueno, "Justice and just price in Francisco de Vitoria's Commentary on Summa Theologica II-II q77," *The Journal of Philosophical Economics: Reflections on Economic and Social Issues*, vol 14, n.1-2: 2021.

Some details on Vitoria's commentary on Aquinas' question considering trading.

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Charles-Rene Billuart, *Summa Sancti Thomae Hodiernis Academicarum Moribus Accommodata*, Vol 7, Pelagaud et Lesne: 1839, 97. Tomus VII, Dist. III, Art. XIII
Billuart's treatment of the question of trading. It is very similar to Cajetan.

Scotus, John Duns, Ordinatio IV, dist 15, q. 2, n. 152-

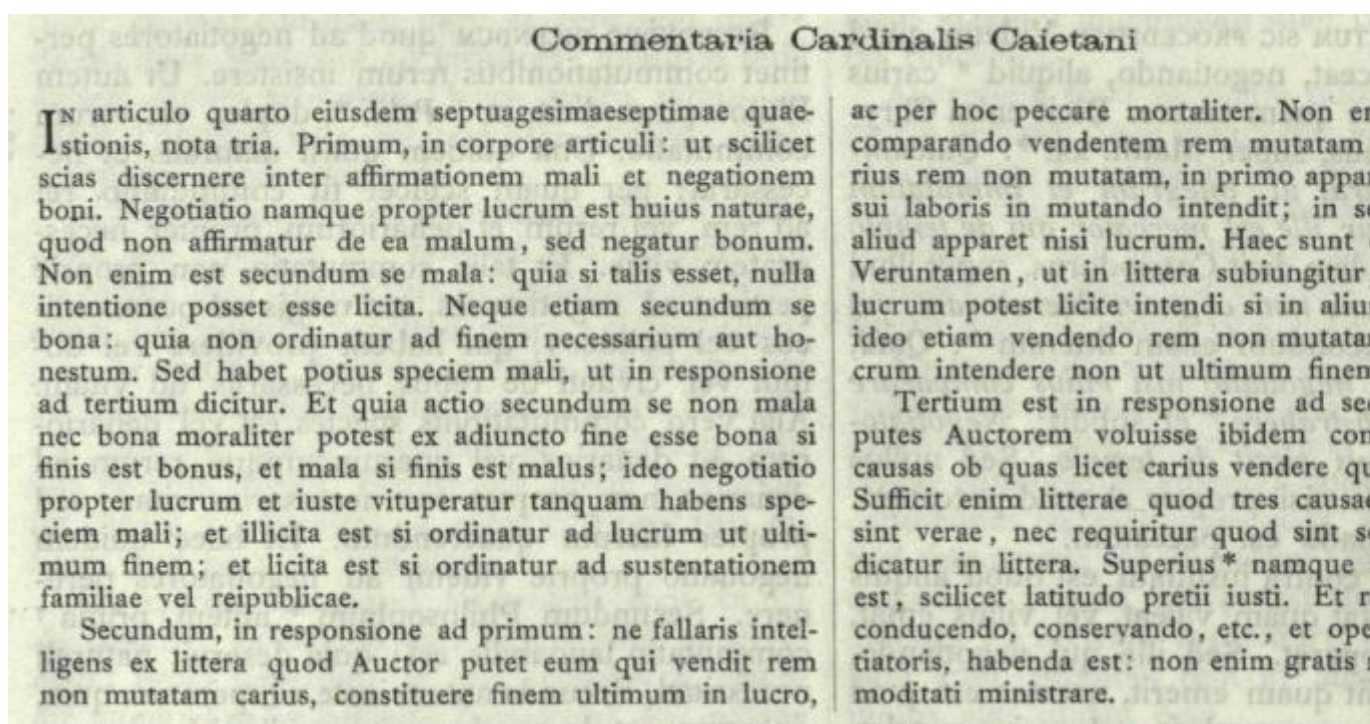
157 <https://aristotelophile.com/Books/Translations/Scotus%20Ordinatio%20IV%20d.14-42.pdf>

Scotus' views on morality of trading. He requires labor, risk or care for licit trading. However, care can be merely holding a good until another needs it, which supports the common good.

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Cajetan's Commentary on ST II-II, q. 77, a. 4

Posted on [March 24, 2023](#)



In the fourth article of the 77th question, there are three notes. First in the body of the article: that namely we understand to distinguish between affirmation of evil and negation of good. For trading is of its nature for the sake of profit, which does not affirm evil of itself, but denies good. Indeed it is not evil in itself, for if it was as such, no intention could make it licit. Neither likewise is it good in itself, because it is not ordered to a necessary or honest end. But it has rather an appearance of evil, as is said in response to the third objection. And because the action is morally neither evil nor good in itself it can from an added end be good if the end is good and evil if the end is evil. Therefore, trading is justly reproached for having the appearance of evil and it is illicit if it is ordered to profit as the ultimate end, and licit if it is ordered to the sustenance of the family or the community.

Second, in response to the first objection: do not be deceived from the words that the Author judges that he who sells a thing unchanged more dearly, establishes the ultimate end in profit, and thereby sins mortally. Indeed he does not say this, but compares the seller of a changed thing to the seller of the unchanged thing. In the first, seller intends the reward of his labor in changing the thing. In the second, however nothing appears except profit. Nevertheless, as is added in the words of the Author, because profit can be licitly intended if ordered to another end, therefore also the seller of the unchanged thing can intend profit, but not as an ultimate end.

Third is in response to the second objection, that you do not think the Author intended to include in that place all the causes from which it is licit to sell more dearly than it was bought. It suffices indeed by the words of the Author that three just causes are assigned in that place, nor is it required they are the only ones, since this is not said in the words of the Author. For another reason was assigned above (art. 1, ad. 1), namely the breadth the just price. And the reason of expenses in hiring, maintaining, etc. and the work of the trader himself must be considered, for they shouldn't have to serve our advantage gratuitously.

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Posted on [April 3, 2023](#)

On the Contracts of Merchants by Johannes Nider (c 1438)

<https://archive.org/embed/oncontractsofmer0000nide>

An interesting source, because he seems to try to combine insights from Aquinas and Scotus. It doesn't seem to follow the typical interpretation of Aquinas on trading and adds some of his own principals. For example, Nider insists that a trader's profit should be proportional to his labor, which appears neither in Scotus nor Aquinas. As an implication, it seems implausible.

Money For Nothing: The Sin of Usury by Joseph Burke

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3570155

A Catholic economist attempts to discuss usury by relying almost solely on Lateran V. This is a notable example, because he use modern economic theory to excuse usurious practices by relying on the ambiguity of the definition in Session 10 of Lateran V.

Digest of Justinian Book 13, Title 6, No. 6 – Ulpian

<https://archive.org/details/digestofjustinia0000unse/page/n482/mode/1up>

Thing consumed by use cannot be the subject of loan for use [commadatum] unless they happen to be given to someone for ceremony or display.

This is a central sticking point for all of the Scholastics to explain. Ulpian implicitly locates the problem of “consumed in use” in the nature of the contract and with it the whole problem of usury. This is the beginning of understanding usury from nearly two millenia ago.

Medieval Sourcebook: Church Fathers on Usury

<https://sourcebooks.fordham.edu/source/444leousury.asp>

St. Jerome on Usury, 400: If you gave to a prosperous person you should not have done so: but if (even so) you gave it as to a needy person, why should you demand more on the score of his being prosperous? Some lenders are wont to take small gifts of dilferent value, not realizing that whatever is received over and above what was given is called usury and superabundance. They ought not to take more, however much it be, than was originally given by them.

This passage translates a part of Jerome's commentary on Ezekiel. It clearly shows that Jerome condemned usury against the rich.

Interest Rates and Efficiency in Medieval Wool Forward Contracts

[https://www.academia.edu/29169161/Interest rates and efficiency in medieval wool forward contracts](https://www.academia.edu/29169161/Interest_rates_and_efficiency_in_medieval_wool_forward_contracts)

TNA E159/60, rot. 18⁸ 12 May 1287

Recognisance of the abbot of Meaux.

He came before the exchequer court and recognised for himself, his convent and his successors that he was bound to Ricardo and Reynerio Guidicionis, Henrico de Podio and Thomasino Guidicionis, and their fellow merchants of Lucca, in eleven sacks of the better wool of his house, pressed and packed into round bales and weighed according to the ancient custom of the house, to be delivered to the merchants in the quindene of the Nativity of St John the Baptist [8 July] 1289 in Hull, packed into the sarplers of the abbot and convent. For which wool the abbot acknowledged he had received the full price in advance, which is to say 15 marks per sack. And if the abbot cannot deliver the said wool to the merchants at the specified term, he agrees for himself, his convent and for his successors as abbot that the exchequer might levy the wool or its value from the lands, tenements, goods and chattels of the house.

An example of a medieval advance on a sale, which is fully secured by the property of the monastery and is therefore non-usurious.

Posted in [Church Fathers](#), [Finance](#), [Quotes](#), [Research](#), [Twitter](#), [Usury](#) | Tagged [dailyprompt](#), [dailyprompt-1896](#) | [Leave a reply](#)

Extrinsic Titles

Posted on [August 24, 2023](#)

The theory of extrinsic titles has a long and controversial history. [1] The general flow unfortunately was toward greater and greater excess, thus minimizing the usury doctrine into practical irrelevance as some [extrinsic title could always be claimed](#) [2]. However, here I wish to consider several of the titles proposed throughout the ages. To give some direction to the essay, I want to make it a parallel to [Brandon's essay](#) at the Siris blog. This is not so much meant as a criticism, though I think he is wrong in part, but as a deeper analysis into the errors undiscussed in the titles Brandon mentions. We will see that most of the title are usurious and entirely unjustified. The first place to start is to explain what the extrinsic titles are and why they are needed in discussions of usury. The problem of usury is that there is no *intrinsic* title to more than the principal. That is the lender has no claim on the basis solely of lending in a mutuum to make a claim to more. The lender has claim against the borrower's personal promise to make a return. This justifies only a return of the amount he gave and no more. However, there may be *extrinsic* titles to something more.

These extrinsic titles are claims that the lender has to more than was given on the principal of the mutuum. The extrinsic titles do not arise from the mutuum itself, but run parallel to it and so are justified apart from the mutuum. This is the first point

often missed in the discussion of extrinsic titles, namely there must actually be a real claim apart from the mutuum from which the extrinsic title arises. Apart from some real claim, there is no extrinsic title and the additional amount is nothing but usury. As we will see this is precisely the problem with most of the proposed extrinsic titles.

The next question we might ask is where the Magisterium has spoken on extrinsic titles. Brandon points to the definition “established by the Fifth Lateran Council” as indicating extrinsic titles. As I’ve noted before, this appears to be the position of the famous moral theologian, [Fr. Dominic Prummer](#), and within context is a [deeply mistaken reading](#) of Lateran V. Hence, Lateran V neither defines nor approves of any extrinsic titles. Also, as I’ve noted before [Benedict XIV’s Vix Pervenit](#) discusses extrinsic titles, but only in the most conservative way of not denying their existence. [2] Thus, while there is good reason to believe there are some extrinsic titles, there is no unambiguous Magisterial support for any particular title or extrinsic titles generally.

We shall change the order given by Brandon and consider the *poena conventionalis* first, since it was the least controversial. In this case, the title is a sort of late fee against the loan. If the borrower fails to repay the loan on time, then he owed the lender something extra because of the default. This was largely uncontroversial among the early Scholastics and Aquinas discusses in two places. In [De Malo q. 13, a. 4, ad. 14](#), he discusses two sorts of loss and it is the late payment that justifies something extra. In [ST II-II, q. 62, a. 4, ad. 2](#), he also address the late fee. Here he justifies this on the basis that the lender has some profit virtually and so the late borrower owes restitution. Here Aquinas uses the analog of a farmer haven’t planted a field, and so these virtual profits must be one’s he planned to obtain. The real title arises from the violation of the contract, because the borrower has a real claim to return and therefore also the loss he suffers from not receiving it.

The second title we shall discuss is *damnum emergens*. In spite of Brandon’s claim, there was more controversy around this title than he admits. In its least controversial form, the title allowed for something over the principal on the basis of some loss suffered by the borrower. These were real losses of property that the lender had a claim to. For example, if the lender had to pay a fee to write the contract or get the funds for the mutuum, he could pass that onto the borrower. Here we have a real claim, because the lender is spending his own money for to enter the mutuum. The title to that property is extrinsic to the act of lending and the lender may make it a condition of the contract that the borrower pay him back for those costs.

Now there are a few more things to say about *damnum emergens*. First, is that among some authors, other titles were justified upon this same basis of a loss suffered. In fact more than one author suggested that all of the titles were simply variations of the *damnum emergens* title. For example, *poena conventionalis* is just a loss suffered. The second thing is that *damnum emergens* expanded well beyond the limits of real losses and costs and we shall discuss this next.

Among these expands was the includes of the notion of *damnum emergens* as a lack of money (*carentia pecuniae*). Fr. Bernard Dempsey explains this in his book [Interest and Usury](#). Essentially, the lender can charge the borrower for losses he suffers as a result of not having the money he lent, such as deterioration of his house or having to sell profitable business to cover other costs. This is justified on the basis that the mutuum puts the lender at a disadvantage from not having the money. Since trade was invented for the common advantage, this must demand compensation so that the lender is not so disadvantaged.

One must notice that in this case the lender has no claim to any property. His suffering a loss may be a result of the lack of money, but he has no claim to the money after having entered the mutuum. [Aquinas](#) remarks that the borrower should not have to pay for the lender's stupidity in this case. Aquinas moreover remarks that we would not demand some compensation in the case of a sale either.

Next we turn to the title of *lucrum cessans*. As Brandon remarks this is the claim a merchant may make over the profits he would have made had he not entered the mutuum. He suffers this loss of profits that he passes onto the borrower, who has occasioned the loss by the mutuum. Brandon justifies this on the basis that there was a higher degree of certainty of the counterfactual profits. However, no degree of epistemic certainty can grant someone a legal title to something. Even if I have a high degree of certainty that another woman would have married me, this doesn't entail that I have a title to sexual intercourse with her against my current wife.

Aquinas also discusses this in the Summa and the De Malo. Much has been [written](#) about the meaning of Aquinas "may be prevented in many ways from having" in his [rejection of *lucrum cessans*](#) in the Summa. Brandon appears to follow this line of reasoning by shifting to epistemological certainty, but in the De Malo Aquinas provides no such qualification and just [rejects *lucrum cessans* outright in the objection](#). One way to read Aquinas is that he is saying that someone cannot have a claim to what does not exist and may never actually exist. In this sense, he is simply saying that someone cannot charge for counterfactuals.

Next we can turn to *periculum sortis* or risk of the principal. The idea here is that the lender puts out his money to the borrower, but there is some real risk of default. There are different justifications for this title ranging from the fallacious to the absurd. One is charging for "[self-insuring](#)" where the lender could ask for a pledge or guarantor, but takes the risk on himself. However, here he charges for nothing, because he can't charge himself for a collateral claim to his own property. De Lugo goes so far as to absurdly claim that the lender could charge for the [mental anguish](#) suffered at the possibility of losing his money. Elizabeth Anscombe rightly referred to this title as "[a monstrosity](#)."

Again, as with the other titles, there is no title present from which to derive an extrinsic title. The Late Scholastic attempted to use analogies to justify the title but only failed by tying themselves in knots. Brandon's justification is extremely weak. The lender has a claim based on the notion that he ought not to have to suffer bad luck. There is no way to take this notion seriously. Lending to a friend in need is risky business as is most of life. That your friend should have the opportunity to pay you to insure your risky decisions is entirely backwards.

Finally, we come to the *praemium legale* or the legal title. This title makes the claim that if the prince allows for something more to be exacted, then one has a title to do so. One proposal was that the State could legitimize this profit because of it [eminent domain](#). It essentially transfers the ownership of the property by its own authority for the sake of the common good. Brandon's discussion justifies it based on the common good of lending. The State incentivizes lending by allowing a certain measure of profit in order to encourage the common good.

The first case of eminent domain assumes that the State can steal from one person and give it to another. Eminent domain simply is not an unlimited authority of the State to transfer ownership and when it is used to facilitate usury, it is manifestly evil and unjust. Moreover, it ignores the excommunication of State officials who enforce usurious contract by the [Council of Vienne](#). Brandon's case is not better, because there is again no title. The lender has no title to more. It is just that the State enforces

usurious contracts in order that more miserly lenders will lend. Mutuum lending is an act of charity and it is unfortunate that more don't participate in it as such, but the State formally participating in a grave evil to increase lending simply makes no sense. Hence, in the end we see that the most of the titles are essentially usurious. They are not grounded in any real title. It is notable that while the Late Scholastics attempted to argue for the existence of a title, Brandon's commentary is much thinner relying rather on epistemic certainty or a relation to the common good. This has been the course of thing and the Neo-Scholastics of the late 19th and early 20th centuries largely accepted these titles without addressing the dialectical changes they posed.

[1] I go into greater detail about the titles and there problem in my article to be published by CUA in [Restoring Ancient Beauty](#).

[2] "Modern practice may be understood not as the rent of money, but as the universal claiming of *lucurm cessans*; for in today's economy every holder of money can employ it profitably, and to forego money's use in a loan gives every lender a right to interest."

[2] "But by this **it is not at all denied** [nequaquam negatur] that sometimes there can perhaps occur certain other titles, as they say, together with the contract of lending, and these not at all innate or intrinsic in general to the nature of a loan, from which titles there arises a just and entirely legitimate cause of rightly demanding something more above the principal than is due from the loan."

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An Example of a Life Census – 852

Posted on [August 24, 2023](#)

About this time Abbot Ceolred of Medhamsted, with the concurrence of the monks, let to hand the land of Sempringham to Wulfred, with the provision, that after his demise, the said land should revert to the monastery; that Wulfred should give the land of Sleaford to Medhamsted, and should send each year into the monastery 60 loads of wood, 12 loads of coal, 6 loads of peat, 2 tuns full of fine ale, 2 neats' carcasses, 600 loaves, and 10 kilderkins of Welsh ale; 1 horse also each year, and 30 shillings, and one night's entertainment. This agreement was made in the presence of King Burhred, Archbishop Ceolnoth, Bishops Tunbert, Kenred, Aldhun, and Bertred; Abbots Witred and Wertherd, Aldermen Ethelherd and Hunbert, and many others.

Source.

From: James Ingram, trans., *Anglo-Saxon Chronicle*, (London: J. M. Dent & Sons, 1917), p. 61, reprinted in Roy C. Cave & Herbert H. Coulson, *A Source Book for Medieval Economic History*, (New York: The Bruce Publishing Co., 1936; reprint ed., New York: Biblo & Tannen, 1965), p. 61.

Scanned by Jerome S. Arkenberg, Cal. State Fullerton. The text has been modernized by Prof. Arkenberg.

<https://sourcebooks.fordham.edu/source/852ASC-rentsinkind.asp>

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Some Legal Resources

Posted on [August 24, 2023](#)

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Cajetan on Montes Pietatis being Usurious

Posted on [September 26, 2023](#)

I think this may be where Leo X derives the “definition” of usury in Inter Multiplices. The paleography is difficult to decipher, but Cajetan is discussing how the montes are usurious and it seems like he is talk about expenses/losses, risk and labor or paying a laborer. I still need to work through it, but if it is then I think it would definitively (or at least as definitively as possible) show that the Lateran V definition of usury is a part of Leo X's summary of Cajetan's position and now proposed by the Council.

https://www.google.com/books/edition/De_monte_pietatis/asFLAAAcAAI?hl=en&gbpv=1

Ca. 9. Determinatio q̄ in p̄missis tractibus
committitur usura.

Reliquū quo ad hāc partem est/at uideatur an iniu-
sticia q̄ i his inuenit̄ tractibus usure rōem habeat
qd̄ ex duobus p̄siderandū est. Primo ex eo q̄ u s̄ura duob⁹ mo-
dis cōmittitur: s̄. augendo ex mutuo capitale. & exigēdo recō-
pensationem damni/qd̄ non p̄pter mutui bñficiū incurrit̄.
Neq̄. n̄. minus usurā sapit: uelle ab accipiente mutuum recō-
pensationē dāni qd̄ ab hostib⁹ uel latronibus passus est. q̄ uel-
le ad augendas opes aliqd̄ ultra sortē. In p̄posito aut̄/cum iā
pateat montem pietatis siue uniuersitatis paupm/ & breuiter
uolentē sibi pecuniā montis integre & secure saluari quicūq̄
sit ille/exigere a lōbe paup̄e mutuū petente/expensas q̄ n̄ i illi⁹
fauorē fiunt: p̄sequens est q̄ exigit recōpensationē dāni qd̄
non ex mutui bñficio incurrit̄. s̄ p̄p̄i pecunie reh̄nde securi-
tatē. Nec obstat aliquāl̄ q̄ dānum hoc ex mutuo emergit/sal-
tem occasionali. Nihil siq̄dem refert uñ dānum hoc pueniat
aut a quo inferat̄: dūmodo ex eo q̄ sit i fauorem lōbis paup̄is
ut sic/n̄ causet̄. Ista. n̄. negatio sufficit ad hoc q̄ iniuste exigat̄
ab eo/ & cōter q̄ usurariet̄: ex quo (ut dcm̄ est) n̄ refert ad usu-
rā/dānum indebitū a petente mutuum exigere/aut lucrū q̄re-
re. Scd̄o ex eo q̄ nō minus usurariū est. mercedē alteri debitā
non ex seruicio impenso ad mutui bñficiū ut sic/ab accipiente
mutuū exigere q̄ quodcūq̄ aliud lucrū ultra sortē petere. Neq̄
.n̄. ab usura remotius ē/grauiare iniuste accipientē mutuū ad
soluendū aliquid ultra sortē alteri quacūq̄ ex causa q̄ sibi ipsi
mutuanti. Cōstat aut̄ q̄ hic grauat̄ iniuste lōbes paup̄/ dū ac-
cipit mutuū/ ad soluendū ministris p̄ opibus p̄ quib⁹ n̄ tenet̄:
quanq̄ nihil ad montis mutuantis augmentū exigatur: non
igitur subterfugi potest/quin usuraria sit exactio ista/ scd̄m iu-
sticie cōmutatiue formā loquendo. Ad euidentia uero solu-
tionis obiectionū in oppositū/diligenter attēdendū est. q̄ hic

sunt duo: scilicet reddere mercedem ministris seu quod idem est ipsos ministris accipere mercedem pro locatis operibus: & hoc est iustum & omni equitate plenum: quia eius causa est locatio operis suae. Alterum est exigere huiusmodi mercedem a locatore paupere: & hoc iniustum est & usurarium: quia cum nulla causa alia est nisi mutuum: quoniam opere ille locare non sunt loci pauperi/ut propter illas ab eo exigere merces possit. Vnde prima ratio peccat assumendo quod hic nihil ultra sortem querit propter mutuum. sed tamen propter locatas operas: quoniam secundum ueritatem/ex mutuo exactio ista causatur. ut ex dictis patet. Vel & in idem redit. uerbaliter respondendo dicat. quod exigere propter locatas operas contingere potest dupliciter: Vnde homo propter locatas operas in fauorem accipientis mutuum: & tunc bene legitur ergo non propter mutuum: quia locatio operum in huius accipientis mutuum fauorem facta. causa proxima est quod ab eo iuste merces hec exigatur. Alio modo propter locatas operas. non in fauorem huius accipientis mutuum: sed alterius quicumque sit ille: & tunc male inferitur. ergo non propter mutuum: quoniam causa proxima huius exactiois est. uel mutuum. uel locatio operis: sed locatio operis causa secundum iusticiam esse non potest. eo quod opere non sunt in fauorem huius accipientis mutuum locati: igitur mutuum huius exactiois causa proxima est. ac per hoc ultra committitur. Nec obstat id quod confirmando subdebatur. scilicet quod si ministri donare hoc uolunt monasterio non turbabitur: ex hoc. non. nihil aliud haberi potest. nisi quod monasterio lucrum ex hoc non queritur: sed non habetur quoniam loci pauper graue ex accepto mutuo. ad mercedem reddendam ministris adquam non tenetur: Sicut si pauper ab aliquo mutuum sumat. cum onere quod rustico cultori uinee mutuantis mercedem red-

dat. usura n̄ deficit. ex eo q̄ rusticus p̄ illi paup̄i absq̄ mutuā
tis turbatiōe donare mercedē ppriā. Scda aut̄ rō p̄cludit mer
cedem ministroḡ n̄ esse usurariā. & hoc p̄culdubio uerum ē.
qm̄ iusta & scā est: s; non p̄bat. quim mercedis exactio a lōbe
paup̄e qui non tenet sit usura. Debet. n. merces illa exigi ab
eo qui tenetur ad illam. & nō ab hoc paup̄e: & ideo si reddat
merces talis ab eo qui tenet iusticia est. uel charitas si pietatis
intuitu ab aliquo q̄ nō tenet: si aut̄ exigatur ab eo q̄ nō tenet:
clare cōstat q̄ quāuis merces sibi debeat: iniusta tñ exactio
est. quia hic nō tenetur. Et si adiunxeris q̄ exactio ista nō nisi
per mutuū mandatur: usuraria manifeste apparebit: quod in
D ii

casu isto cōtingere iā patet. Est igitur intra iusticie cōmutati
ue terminos loquendo. multiplex iniusticia & usura in capitu
lis montis pietatis.

Gemini Translation:

Whether it is usury to charge a fee in two ways: first, by increasing the capital from a loan; and by demanding compensation for damage that is not incurred due to the benefit of the loan. No less usury is it for the recipient of a loan to demand compensation for damage suffered from enemies or thieves, or to seek to increase his wealth by something beyond the principal. In the case at hand, let the mountain of piety or the university open its ears to the poor man, and in short, whoever he may be, who does not want his money to be kept safe and secure by the mountain, to demand from the poor man seeking a loan the expenses incurred in his favor, and therefore to demand compensation for damage that does not arise from the benefit of the loan, for the sake of the security of the money. Nor does it hinder in any way that this damage arises from the loan, only occasionally. It makes no difference whether this damage comes from punishment or is inflicted by water, as long as it arises from what is done in favor of the poor man, as the cause. For this denial suffices to make it unjust to demand it from him, and both usury and extortion (as has been said) make no difference to unjustly demanding undue damage from the one who seeks a loan, or to seeking gain. Secondly, it is no less usurious to demand from the recipient of a loan a wage owed to another, not from a service rendered for the benefit of the loan, as such, than to demand any other gain beyond the principal. Nor is it any more remote from usury to unjustly burden the recipient of a loan to pay something beyond the principal to another for any reason whatsoever to the lender himself. But here the poor man is unjustly burdened when he receives a loan to pay the public servants for whom he is

responsible, since nothing is demanded for the increase of the mountain's loan. Therefore, it cannot be denied that this exaction is usurious, even if we speak according to the form of commutative justice.

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Nicholas V's Sollicitudo via ChatGPT

Posted on [September 18, 2023](#)

Here is a sample of the ChatGPT translation of Sollicitudo. I may have fat fingered a few things and this is only first half of the bull, but I'll update when I have time to transcribe the rest.

English

Nicholas, bishop, servant of the servants of God, for a perpetual remembrance of the matter. The pastoral care of our office never ceases to urge our solicitude so that, attending wisely to the moderation of legal strictness, through the remedies of the best provision, as much as is permitted to us from on high, we may healthfully consult the indemnity and favorable state of the faithful people entrusted to our care by divine ordination. Truly, (as we have learned from the trustworthy accounts of individuals), in the Kingdom of Sicily and certain other domains and lands, the blindness of insatiable greed and the pernicious poverty of accursed ambition of our dearest son Alphonsus, illustrious King of Aragon and both Sicilies, has so blinded the eyes of some, and the wickedness of usury has so greatly increased in those regions, that the inhabitants and dwellers of those parts, being in need of money, can hardly obtain it except through the practices of moneylenders (as if they were engaging in unheard-of usury), and when they receive them, if they do not return them in time, their goods are wretchedly consumed in a relentless whirlpool of usury. Concerning the domains and lands established in the territories beyond the mountains of the same King, namely in the Kingdoms of Aragon, Valencia, and Majorca, as well as in the principality of Catalonia and the counties of Roussillon and Cerdanya, universities and individual persons, both ecclesiastical and secular, in need of money, so that they can possess them with lesser inconvenience, have commonly taken care of and managed for themselves, through the sale of annual rents (which are called "dead rents") on houses, possessions, and properties, specifically, or even generally on all their goods, incomes, emoluments, rights, and things (provided, however, with a provision for the grace of redeeming their burdens). In the aforementioned parts of the same Kingdom and in the

Kingdoms beyond the mountains, it has been not only established through long custom (of which the memory of men does not exist to the contrary) by those making use of such practices, but also specially confirmed through the municipal laws of these regions and the laws of the country, promulgated by the King himself or his predecessor, with the consent of the three branches (namely, the ecclesiastical, the military, and the royal). Therefore, since many inhabitants and dwellers of the regions and dominions of the same King beyond the mountains are in need, and they can be undermined through the sale of such rents, and can be freed from the usuries of those moneylenders, but because they hesitate to engage in usurious wickedness due to having ample money in this matter, and thus they fear to assist the needy in the aforementioned manner, to the detriment of the needy and the evident increase of the moneylenders. On behalf of the same King and his subjects under his sovereignty, it is presented that many are currently weighed down by the gaping pit of severe usuries, having been exhausted by large sums of money, and others are becoming more and more in need of money, being increasingly oppressed and harassed by interest. We were humbly implored to extend our paternal compassion to them and, with a heartfelt desire, to primarily provide timely assistance through suitable provisions. They requested us to decree and declare, by our apostolic benevolence, that the aforementioned sales of annual rents, with clauses and guarantees, can be carried out for their effectiveness, to be entered into between sellers and buyers with mutual consent, without injuring their consciences, in the Kingdoms of Sicily, this side and beyond the Pharos. Therefore, desiring to provide wisely in these matters, in accordance with the duty of our divinely imposed pastoral ministry, and to assist as much as we can with God, in the state and indemnities of the inhabitants and dwellers of the Kingdoms and lands of the said King situated on this side of the mountains and beyond, both present and future, we aim to be of help. Recognizing that, concerning the clergy of the lands and dominions of the same King situated on this side of the mountains, provision has been made and it has been consulted on several occasions by Apostolic authority due to their former needs through the sales of the aforementioned annual rents. Incline to the supplications of the aforementioned King in this matter, as well as to those of the inhabitants, dwellers, and the universities of places, cities, and lands of the aforesaid Kingdoms of Sicily on this side and beyond the Pharos, we decree and declare to all and singular, that the said annual rents, concerning their properties and possessions, as well as their resources and incomes, may be contracted, sold, and bought between them at a similar price, through an instrument of grace, for the purpose of redeeming them, provided (as long as the annual rent of such annual rents does not exceed one-tenth of the principal received or the price thereof). This should be done with suitable security, protection, and indemnification for the contracting parties.

And with the aforementioned selling persons, and their properties, revenues, census, and all and singular movable and immovable goods, to be obligated and made to be obligated; and also any other obligations and submissions to any forum, as well as renunciations, promises, stipulations, penalties, remunerations, and other cautions secured, and any other things, about which between the buyers and sellers of such censals, it has been agreed and brought into pact, we grant full license and free faculty, by Apostolic authority, by the tenor of these presents, decreeing and declaring, the same inhabitants and residents, and the universities of the cities and lands, to be able to freely and lawfully contract, buy, and sell the aforementioned censals, in the same Kingdoms of Sicily, on this side and beyond the Strait, and not thereby commit usurious depravity (provided that as mentioned above, any annual censal does not

exceed a tenth part of the received or the price of the sale in view), and the pensions or annuities of the same, not being computed into the principal, for the total redemption, beyond the principal sum, nothing more is to be received by the buyer, or exhibited by the seller.

Notwithstanding the constitutions, and ordinances, and Apostolic privileges, as well as statutes, even municipal or royal, and customs of the cities, and lands of the aforementioned Kingdoms of Sicily, on this side and beyond the Strait, even if confirmed by oath, Apostolic confirmation, or any other firmness, even if a special mention of them should be made (which we wish to be held here, and we hold as sufficiently expressed), and any other contrary things whatsoever. Therefore, let no one at all dare to infringe this page of our concession, constitution, and declaration, or to oppose it with rash daring. But if anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God, and of the blessed Peter and Paul, His Apostles.

Given at Rome, at Saint Peter's, in the year of the Incarnation of the Lord, one thousand four hundred and fifty-six, on the second day before the Calends of October.

Latin

Nicolaus episcopus, servus servorum dei, ad perpetuam rei memoriam. Sollicitudo pastoralis officii sores nostrae providentiae plusare non definit, ut indemnitati ac statui prospeio fidelis populi, curae nostrae coelitus, commissi, iuris moderando rigorem, per optimae provisionis remedia, quantum ex alto nobis permittitur, salubriter consulamus Sane, (sicut fide dignorum relatione didicimus) in Regno Siciliae, ac certis aliis dominiis et terris, charissimi filii nostri Alphonsi, Aragoniae et utriusque Siciliae Regis illustris, avaritiae coecitas et damnadae ambitionis impobitas, quorundam oculos adeo ex coecavit, usurariaque pravitas, illis in partibus, tantum excrevit, quod incolae et habitantes partium illarum, pecuniis indigentes, eas vix aliter quam faeneratorum opera (quasi inauditum faenus exercentium) consequi possunt et cum eas acceperint, si in tempore, percepta non reituant, brevi eorum bona, infatiabili usuraum voragine, miserabiliter consumuntur. Quod in dominiis et terris ipsius Regis ultra montes consstitutis, videlicet in Regnis Aragoniae, Valentiae et Maioricaru, ac principatu Catholoniae et comitatibus Rossilionis et Ceritaniae, universitates et singulares personae, tam ecclesiallicae quam seculares huiusmodi, pecuniis indigentes, ut cum minori incommodo eas habere possint, per venditiones annualium censualium (quae mortua nuncupantur) super domibus, possessionibus, et proprietatibus, speculatiter, vel etiam generaliter super omnibus bonis, redditibus, emolumentis, iuribus, et rebus eorum (mediante tamen instrumento gratiae redimendi onera eorum) sibi ut plurimum prospicere et consulere consuerverunt. Quod in praedictis eiusdem Regni partibus, et Regnis ultra montes constitutis non solum in longam consuetudinem (de cuius contrario memoria hominum non existia) more utentium deductum est, sed etiam per municipalia huiusmodi Regnorum et patrium iura, per Regem ipsum, seu eius praedecessorem, cum consensu trium brachiorum (videlicet ecclesiastici, militaris, et regalis) promulgata, specialiter confirmatur. Cum itaque multis incolis, et habitatoribus partium et dominorum eiusdem Regis, ultra montes constitutorum, indigentibus, per huiusmodi censualium venditiones subuerniri, ipsique faeneratorum usuris eximi possint, sed quia in hoc, pecuniis abundantes, dubitant usurariam pravitatem committere, et sic eisdem indigentibus

more praemisso succurrere formidant, in indgentiu detrimentum, et faeneratorum quorudnam evidens incrementum. Pro parte eiusdem Regis afferentis se, et subditos serenitatis suae, quamplures gravium usurarum voraginibus, magnis hactenus pecuniis exhaustos existere, alios quoque in dies pecuniis egentes, faenore magis atque magis opprimi et vexari. Nobis fuit humiliter supplicatum, ut eis paterno compatientes affectu, inprimis de opportunae providionis opere succurrere, praefatasque censualium venditiones, cum clausulis et cautionibus, ad earum valitudinem, inter venditores et emptores mutuo consensu ineundis, absque laesione conscientiae, in Regnis siciliae, citra et ultra Pharum sieri posse, decernere, et declarare, de benignitate apostolica dignaremur. Nos igitur pro debito pastoralis iministerii nobi divinitus iniuncti, super his salubriter providere ac statui et indemnitatibus incolarum et habitatorum Regnorum et terrarum dicti Regis, citra montes constitutorum, praesentium et futurorum, quantum cum Deo possumus, subvenire cupientes. Artendentes quod clero terrarum et dominiorum ipsius Regis citra montes constitutera in suis olim indigentiis per venditiones praedictorum consualium, auctoritate Apostolica, pluries consultum et provisum fuit. Praesati Regis in hac parte supplicationibus inclinati, tam eidem Regi, quam huiusmodi Regnorum Siciliae citra et ultra Pharum omnibus et singulis in colis, habitatoribus, ac locorum, civitatum et terrarum universitatibus, praesentibus et futuris huiusmodi censualia, super rebus et proprietatibus suis, ac facultatibus et emolumentis eorundem, instrumento gratiae, pro consimili pretio illa redimendi, mediante (dummodo annualis censu huiusmodi censualium, decimam partem principalis recepti seu precii eorundem, no excedat) inter se contrahendi, vendendi, et emendi, cum opportuna contrahentium securitate tutione, et indemnitate. ac cum praefatae vendentes personas, eorumque proprietates, redditus, census ac omnia & singula mobilia & immobilia bona, obliganda, & obligari facienda; ac etiam quascumque alias obligationes & submissiones cuicumque foro, nec non renunciationes, promissiones, stipulationes, poenis, renumerationibus, & aliis cautionibus vallatas, & alia quicumque, de quibus inter ementes & vendentes huiusmodi censualia, conventum & in pactum deductum fuerit, plenam licentiam, & liberam, auctoritate Apostolica, tenore praesentium, concedimus facultatem, Decernentes & declarantes, eosdem incolas & habitatores, ac civitatum & terrarum universitates, censualia praedicta, modo praemisso, in Regnis ipsis Siciliae, citra & ultra Pharum, libere & licite contrahere, ac emere, & vendere posse, neque propterea usurariam pravitatem committere (dummodo alias quam ut praemittitur, quodlibet annum censuale, decimam partem recepti seu pretii venditionis intuitu, non excedat,) & pensionibus seu annuitatibus illorum, in sortem non computans, pro tota redemptione, praeter principalem summam, nihil ultra percipiatur ab emptore, vel exhibeatur a venditore. Non obstantibus constitutionibus, & ordinationibus, ac privilegiis Apostolicis, nec non statutis, etiam municipalibus, vel regalibus, & consuetudinibus civitatum, ac terrarum Regnorum praedictorum Siciliae, citra & ultra Pharum, etiam iuramento, confirmatione Apostolica, vel quacumque alia firmitate roboratis, etiam si de eis facienda esset specialis mentio (quae hic haberi volumus, & habemus pro sufficienter expressis) ceterisque contrariis quibuscumque. Nulla ergo omnino hominum liceat hanc paginam nostrae concessionis, constitutionis, & declarationis, infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare praesumpserit, indignationem omnipotentis Dei, & beatorum Petri, & Pauli Apostolorum eius, se noverit incursurum. Datum Romae apud sanctum Petrum, anno incarnationis Dominicae, millesimo quadringentesimo quinquagesimo sexto, secundo, pridie Calendas Octobris.

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Vermeersch – Quaestiones de **Justitia****Vermeersch – chatGPT Translation**

Posted on [October 31, 2023](#)

ARTICLE 1. Initial presentation of the controversy

357. The reason for the order. It seems worthwhile, in introducing an argument that has been debated for so many centuries in so many controversies, to digress more than usual. Therefore:

a) We will explain the historical developments of the question, which often seem to us to have been considered and reported with a not very free spirit;

b) We will clarify the intrinsic concepts, cutting off many occasions of confusion;

c) We will briefly refute the opinions that we believe are far from the truth in advance, so that the true solution can be more easily approached.

§ 1. Historical notions

358. About usury in sacred writings. 1. It does not seem that there is now a serious doubt that there is no place in the Holy Scriptures, taken by itself, from which it appears that lending money at interest is in itself or in general illicit. Indeed:

a) As for the Old Testament, even if it contained a universal prohibition, one would further have to inquire about the basis for this prohibition, as it could just as well pertain to positive law, abrogated by a new law, as to a declaration of immutable natural law. However, all the texts that are brought forward are conveniently understood as: a) Disapproving of biting usury by which the poor are oppressed;

B) Especially disapproving of it among the Jews themselves who, as brothers, were bound together by a closer bond of charity.

To a) It is enough to place the most famous passages before one's eyes. Exod. c. 22, v. 25: "If you lend money to any of my people with you who is poor, you shall not be to him as a creditor, nor shall you exact interest from him" (Hebrew: you shall not lay upon him any interest). – Levit. c. 25, v. 35-37: "If your brother becomes poor and cannot maintain himself with you, you shall support him as though he were a stranger and a sojourner, and he shall live with you. Take no interest from him or profit, but fear your God, that your brother may live beside you. You shall not lend him your money at interest, nor give him your food for profit." – In 2 Kings 4:1 a creditor comes "to take her two children to be his slaves." — Ezra 2:5, v. 5 (on the effects of usury): "Behold, we are subjecting our sons and our daughters to slavery, and some of our daughters have already been enslaved; we are powerless, and our fields and our vineyards belong to others." The Psalmist describes the ways of the usurer with these words in Psalm 109: "Let the creditor seize all that he has." – Ezek. 18, v. 8, 13, 17 praises the one who "does not lend at interest" and condemns the one who "gives at

interest”; but both in v. 7 and v. 12, he indicates that he is speaking about the ways in which they “oppressed the poor and needy” and equally commands the return of the pledge taken from a debtor. Amos 8:4 says, “Hear this, you who trample on the needy.”

From this, in their relation to these facts, it is easily understood what a few places that seem more universal are aiming at. Psalm 15: “O Lord, who shall sojourn in your tent?... who does not put out his money at interest”; and Ezek. 22, v. 12: “You have taken interest and profit, and you have greedily gained from your neighbors by extortion; and you have forgotten me, declares the Lord GOD.”

To §) In addition to the places already mentioned from Exodus, Leviticus, and Ezra, the following are particularly relevant: Deut. 15:7-10, where the Lord wishes that, even as the seventh year approaches in which debt forgiveness was to be made, money is to be lent to a poor brother; in the same book, 23:19-20: “You shall not charge interest on loans to your brother, interest on money, food, or anything that is lent at interest. You may charge a foreigner interest, but you may not charge your brother interest”; Ezra 2:5, v. 7: “Do you exact interest, each from his brother?”

b) As for the New Testament, it contains nothing, not even in appearance. For in the place in Luke 6:34-35, the Lord wants us to love our enemies in such a way that the benefits by which others affect only their friends, and for their own advantage, are shown by us to our enemies without any hope of human retribution. Among these benefits is money lent to the needy. Therefore, the words of the Lord concerning the current question of usury “do not pertain, as C. d’Annibale says, II. 533, it is now almost known to everyone.”

2. Does the interpretation of the Fathers and the sense of the Church give greater force to the same texts, so that they contain a universal prohibition of usury? Not a few (e.g., RR. PP. Lehmkuhl, Weiss) affirm this after Benedict XIV in “De Synodo dioecessana”, Book 10, Chapter 4, No. 6.

However, it seemed to us worth sincerely investigating on what grounds they say this. After this investigation, we believe: a) There is no consensus of the Fathers that compels us to abandon the literal interpretation of the texts; b) There is no direct declaration of the sense from the laws of the Church; but only a general reference to the pages of both Testaments as confirming the severity of the sanctions, so that there is no definition by the authentic magisterium except perhaps for the sense which the texts seem at first sight to prefer. For that these in some way disapprove of usury, there is no doubt. However, this will become more apparent from what is to be said immediately.

359. On usury among the Holy Fathers. 1. UP TO THE FOURTH CENTURY, nothing else can be gathered from the Holy Fathers or ecclesiastical writers except that it would be against the precept of humanity and mercy to demand interest from the poor or needy. Nor do they assert that the Scriptures contain a universal prohibition of usury. Consider these principal passages:

a) APOLLONIUS (2nd century), cited by Eusebius (Ecclesiastical History, Book 5, Chapter 18. Migne, P.G., Vol. 2, col. 478-479), wishes to demonstrate that among the

Montanists there are no true prophets: "For when the Lord commanded: 'do not possess gold or silver, nor two tunics', they have grievously sinned by possessing forbidden things. We will show that those who are called prophets and martyrs by them not only collect money from the rich but also from beggars, orphans, and widows.... Tell me, does a prophet dye his hair? Or use eye makeup? Or seek to adorn himself? Does a prophet play dice or lend money at interest? Let them honestly admit and answer whether these things are permissible or otherwise."

b) CLEMENT of Alexandria (2nd-3rd century) in "Stromata" Book 2, Chapter 18 (Migne, P.G., Vol. 8, col. 1023-1026), expressly commends the humanity of the Old Law from the precept of not lending to one's brother at interest. He says: "Regarding generosity and sharing, though much can be said, it suffices to say that the law forbids lending to a brother at interest... considering it not right for us to collect interest from loans but with open hands and hearts to be gracious to the needy. For God established this form of charity. The generous man already receives sufficient interest in the form of what is most precious, sweetest, and most useful among men, namely, magnificence, praise, and glory. Doesn't this seem like a precept of humanity? Like the one: 'Pay the wages of the poor on the same day....'"

c) TERTULLIAN (160 to 3rd century), "Against Marcion", Book 4, Chapter 17 (Migne, P.L., Vol. 2, col. 598-599). There, he broadly considers the compatibility between the Old and New Testaments (which Marcion attributed to two different authors). By comparing a passage from Ezekiel (18:8) with Luke 6, he believes the prohibition of usury in the Old Testament prepared for the more perfect law that commanded renunciation of even the principal (thus rightly interpreting the Gospel words "expecting nothing in return"). "Therefore, it was first necessary to eradicate the fruit of interest, to more easily accustom man to also renounce the principal, especially if by losing, he learned to lose what fruit he had learned to collect." d) ST. CYPRIAN (died 258) a) In the treatise "On the Fallen", Chapter 6 (Migne, P.L., Vol. 4, col. 470-471), he describes the corrupt morals of Christians that needed to be purified by the fire of persecution. "Many bishops," he continues, "... neglecting divine administration, become stewards of secular kings. Abandoning the chair, deserting the people, they wander through foreign provinces to seek profitable trade. While brothers in the church go hungry, they generously wish to have money, they deceitfully seize lands, and by multiplying interest, they increase their wealth." This reproach of bishops, because they greedily demanded interest from the poor, certainly does not contain a general condemnation of the matter. b) In the "Book of Testimonies", III, 48 (Migne, P.L., Vol. 4, col. 759), under the title: "Not to be lent at interest," he simply presents three passages from the Old Testament, one of which, from Ezekiel, clearly refers to the usury by which the poor are oppressed.

2. In the FOURTH AND FIFTH CENTURIES, we notice a situation where believers, moving away from their initial fervor, through their own behavior and greed, prompted the Holy Fathers to almost desire a system where goods remained communal. As a result, several passages have been declared to us that seem to favor some form of communism. This already serves as a significant prejudice that church writers of that time were more focused on the usuries of their era, about which the poet Ausonius could write: "Swift usury slays the poor", rather than on a general definition of doctrine. Their

words, therefore, cannot be taken without proper moderation. Let's sincerely report the main ones from which we can then justly conclude.

A. Greek Fathers.

a) ST. BASIL (331-379), On Psalm 14 and Against Usurers (Migne, P.G., Vol. 29, col. 263 sqq.): "This sin," he says in section 1, "is condemned in many places in Scripture. For Ezekiel lists it among the greatest evils to take interest and overcharge. And the law clearly forbids it." He adds the reason for the prohibition: "Indeed, it's a great inhumanity for one in need to seek a loan for sustenance, but for another to be content with the principal, and to seek profits from the misfortunes of the poor and accumulate wealth." He then describes the cunning and hardness of usurers, using figures and comparisons that St. Ambrose would imitate in his book On Tobit. He dissuades all, whether poor or rich, from seeking loans: "Hear, he continues in section 5, rich men, what advice we give to the poor because of your inhumanity... If you followed the Lord's way, what need would there be for these words? But what is the Lord's advice? Lend to those from whom you hope to receive nothing back." At the end, he directly addresses the usurer: "You profit from misfortunes, you collect money from tears, you strangle the naked, you lash the hungry... You plant without land, you reap without sowing."

b) ST. GREGORY OF NYSSA (brother and contemporary of St. Basil), in his oration Against Usurers (Migne, P.G., Vol. 46, col. 434 sqq.), powerfully condemns the deceptive appearance of a benefit that destroys the poor: "You turn from helper to enemy. You don't offer assistance... but you sow miseries for the afflicted, you strip the naked." He rebukes the usurer for wanting to reap where he did not sow, seeking it from the poor and from gold and copper "which are not accustomed to produce." "You seek profit from the poor and increase your wealth: it's as if someone wanted a heap of grain from a field scorched by intense heat, or a lot of grapes from a vineyard after a hailstorm, or offspring from a barren womb, or milk nourishment from women who haven't given birth." The usurer's money had no other use: "He (the usurer) laments over money kept at home, which is idle and unproductive." The Holy Scripture, which instructs us in all piety, everywhere forbids usury. We are also warned in the Gospel not to lend to those from whom we hope to receive but to forgive the debt. He describes the sad effects of required interest: "How many have killed themselves because of usury..." He believes that a loan is a form of donation: "Another form of donation is a loan." And he threatens usurers with the penalties of a man without mercy: "He is equally liable to punishment who does not give a loan and who gives it on the condition of usury. For the former's inhumanity and the latter's mercenary profit are rightly condemned."

c) ST. JOHN CHRYSOSTOM (347-407): a) On Genesis, homily 41 (Migne, P.G., Vol. 53, col. 376, 377), he affirms that the Lord prohibits seeking usury from anyone, while the Jews were forbidden to seek it only from their brethren. He adds the reason for the prohibition: "For indeed the debtor is worn down by poverty, but the creditor, increasing his riches, accumulates a multitude of sins for himself."

b) On Matthew, homily 5, end of section 5 (M., Vol. 57, col. 61, 62), he inveighs against the usury of his time: "Indeed, nothing is more shameful or cruel than the current practice of usury. For such a usurer trades on the misfortune of others." He rejects the

excuse of lost profit: "But why, you ask, should I lend out my useful money to another for use without seeking any return? Far be it! I do not say this... I want you to lend heaven in usury for gold."

B) On Matthew, homily 56 (or 57), sections 5, 6 (M., Vol. 57, col. 556-558), he contrasts the cares that usury brings with the ease of mercy: "For what is more difficult than to lend... yet to practice mercy is easy and frees from all care. So let us not trade in the misfortunes of others, nor turn things pertaining to love of neighbor into profit." He condemns the oppression of the poor through usury. "For a grave, certainly a grave and truly serious disease has invaded the Church." B. Latin Fathers.

a) LACTANTIUS († 340?) On Institutions, Book 6, Chapter 18 (Migne, P.L., Vol. 6, col. 699), again posits a loan made to the poor. However, he clearly states that interest is the usurpation of another's property. "If he lends money, the just man will not take interest, so that the benefit remains intact, which helps in necessity, and he refrains entirely from another's property. In this kind of duty, one should be content with what one has, for one should not even spare one's own property to do good; but to receive more than one has given is unjust. He who does this, in a way, lays a trap to prey on another's necessity." And in the Summary of Divine Institutions, Chapter 56 (Migne, P.L., Vol. 6, col. 1076): "He will not steal, nor will he covet anything of another's; he will not give money in usury (for this is to seek profit from the misfortunes of others), but he will not refuse if someone's necessity compels him to borrow."

b) ST. HILARY (310(?)-366) On Psalm 14, section 15, on the passage: "Who does not lend money at interest" (Migne, P.L., Vol. 9, col. 307), he writes, "For what is more unbearable than to give a benefit to the needy in such a way that he is more in need, and to increase the misery of the destitute while pretending to help... If you are a Christian, why do you place your idle money to gain interest, and make the poverty of your brother, for whom Christ died, your treasure? If you are a Christian, I do not ask you to be generous; but at least demand your debt back in such a way that you do not rob: and remember that the one from whom you seek interest is a poor man, and destitute, for whom Christ wished to be poor and destitute." He thus condemns usury for being a pseudo-benefit, for being a profit from a brother's necessity, for being a robbery of this brother, and for being income from idle money. Whether he understands these collectively, as some say, or even separately for each, is not clear.

c) ST. AMBROSE (340-397): a) On Tobias, (Migne P. L. Vol. 14, col. 759 and following) in which book he heavily leans on St. Basil as a master and model, Ambrose condemns usury as truly destructive, which pertains to those arts of despoiling others that he criticizes in the book On Naboth. Hence, the money of usurers is likened by him to serpents (c. 12) and to the waves of the sea (c. 5). "How many," he says in c. 7, "have strangled themselves because of usury...; it is the shipwreck of all (c. 13, n. 44)... What is usury? To kill a man, says (Cicero) (c. 14, n. 6)." This usury is grave, being a hundredfold (12%). Through it, the poor are oppressed: "The poor are fertile for your profit (c. 3, n. 11);" because of the usury granted, the rich are reduced to poverty, and their children are sold under auction (c. 8).

b) Letter 19, to Vigilius, c. 4, 5 (Migne, Vol. 16, col. 983, 984), among the guidelines for performing the episcopal duty well, he advises that care should be taken to cut off the

vice of usury, about which he writes: "A Christian man, if he has [money], should give it as if he will not get it back: or at least he should expect to get back only what he gave... Otherwise, this is deception, not assistance... Often, people have fallen because of usury, and it has been the cause of public ruin."

d) ST. JEROME (340?-420): a) On Ezekiel, c. 18, 5 and following (Migne, P.L., Vol. 25, col. 176, 177): He shows the progression in the Law and the Gospel: "But see the progression: at the beginning of the Law, only usury from brothers is removed; in the prophet (Ezekiel), usury from everyone is prohibited... Moreover, in the Gospel, it's an advancement of virtue, with the Lord commanding: 'Lend to those from whom you do not hope to receive.' In the same way, he condemns both those who receive money and those who receive another thing for usury: "Some think that usury exists only in money. Foreseeing this, divine Scripture removes the overabundance of every thing, so that you don't receive more than you gave." — To those who objected that the debtor received profit from the borrowed money, he responds thus: "Let the merciful usurer briefly answer us: did he give to one who had, or to one who did not have? If to one who had, of course, he shouldn't have given, but did he give as if to one who did not have? Then why does he demand more as if from one who had?" It seems he would have said differently if the borrowed money had been useful to the rich.

B) On Amos, c. 8, v. 4 and following (M., Vol. 25, col. 1080), while explaining the prophet, he portrays the prophet rebuking the rich: "You who await the new month to conduct business and increase your usury upon usury."

e) ST. AUGUSTINE (354-430) a) Letter 153, To Macedonius, n. 25 (Migne, Vol. 33, col. 664, 665), explicitly considers usury as an art of killing the poor, similar to theft where the rich are harmed, and as a reason for due restitution. "Is the one who subtracts or takes from the rich more cruel than the one who slaughters the poor with interest? These are ill-gotten gains, and I wish they were returned; but there is no judge to whom they can be reclaimed."

ß) On Psalm 36, n. 6 (M. P. L. Vol. 36, col. 386), he condemns the acceptance of anything beyond the given amount: "I do not want you to be usurers, and I do not want it because God does not want it... If you have lent to someone, that is, if you have given your money as a loan and you expect to receive more than you gave, not just money, but something more than you gave, whether it's grain, wine, oil, or anything else; if you expect to receive more than you gave, you are a usurer, and in this, you are to be disapproved, not praised." He seems to refer to biting usury. If not, he might have written, "And how detestable, how hateful, how abominable it is, I think even the usurers themselves know."

f) ST. LEO THE GREAT (late 4th century-461): a) Sermon XVII (Migne, Vol. 54, col. 181), with grave words, inveighs against the usury by which the poor are oppressed and condemns it as injustice: "Unjust and shameless greed, which claims to be providing a benefit when it deceives... often rightly falls into this situation, where the desire for unjust gain is the cause of just loss... The injustice of usury must be completely avoided, and profit that lacks all humanity must be shunned."

B) Letter IV to the Bishops in Campania (M. Vol. 54, col. 613), criticizes even the usuries captured by the laity: "Some, captured by the desire for disgraceful profit, practice usurious money-lending and wish to grow rich from usury... we mourn that this should befall not those who are established in clerical office, but laypeople who wish to call themselves Christians."

g) ST. MAXIMUS OF TURIN (flourished mid-5th century), Homily against greed (Migne, Vol. 57, col. 476, 477), describes the nefarious effects of usuries by which the poor are afflicted: "(Greed) is not ashamed of the name of usury, and is not ashamed of the profit of usury. Thus, the greedy always use what belongs to others, they feed themselves on another's loss; another's poverty is their gain; another's tears are their joy, as we have always seen. How many losses are mourned, over which many rejoice having taken advantage of them... Tell me, O Christian, are you not pricked in the heart, not constricted, when you see in your own house the tears of others?"

h) SIDONIUS APOLLINARIS (430-490?) Letter 24, To Turnus, (Migne, P. L., Vol. 58, col. 528-531), narrates that he, on behalf of a debtor troubled by illness and debt, approached a creditor for a postponement. Having become a cleric, the creditor graciously granted the postponement and forgave the usuries. The creditor used these words: "Far be it from me, as a cleric, to reclaim from the sick what I would scarcely have asked for as a soldier from the healthy," and by Sidonius, he is said to have "loved both reputation and conscience", that he "did not sell earthly benefits". From this, he advises Turnus, the debtor's son, to pay the debt promptly. If otherwise: "If what he graciously granted out of compassion suffers delay, he justly reclaims it because of the injury."

3. REGARDING LATER CHURCH FATHERS, there's no need to present many testimonies. Indeed, after the time of St. Gregory the Great, many consider the patristic era to have concluded. These ecclesiastical writers often merely repeat what was said by their predecessors, and the tradition of the Church can be more clearly seen in the councils of Bishops. Thus, we will be content with these:

a) ST. GREGORY OF TOURS (538-593 or 594), History of the Franks, Book 3, n. 34 (Migne, Vol. 71, col. 266, 267), tells of a bishop asking the king to lend money to citizens who were involved in trade. The king responded, "We will return your money with lawful interest." The citizens indeed prospered in this manner. The money offered by the bishop was generously declined by the king. St. Gregory recounts this entire action without any reproach.

b) PROCOPIUS OF GAZA (465-528), Commentaries on Leviticus, Chapter 25, 35 (Migne, P. G., Vol. 87, col. 787), "From these words," he says, "it is clear that usury and interest arise from impiety and drive away all humanity. God did not command that this kindness be practiced towards foreign nations... But now kindness and beneficence should be shown to all."

c) ST. GREGORY THE GREAT (540-604), Book of Letters, 9, Letter 38 To Anthemius (Migne, Vol. 77, col. 972, 973): without disapproval, he relates a contract in which someone promised another, from whom they were receiving goods, to pay something "for the sake of profit." When the deal went differently than expected, St. Gregory

wishes Anthemius to approach the seller, whom he calls “our magnificent son,” so that he, “as befits a Christian and nobleman, more kind than strict,” from compassion, “may be content with the amount received.” These words indicate some form of usury; however, the agreement might be considered a partnership rather than mere lending at interest.

d) ST. JOHN OF DAMASCUS († 750) in *Sacred Parallels*, Title IX (Migne, P. G., Vol. 95, col. 1363-1366), simply compiles texts from both Testaments about usury, then briefly presents a homily by St. Basil against usurers, implicitly approving its teaching.

e) RABANUS MAURUS († 856), Archbishop of Mainz, *Commentary on Sirach*, Book 7, Chapter 10 (Migne, P. L., Vol. 109, col. 973, 974), speaking of interest (he means a loan), wants, out of compassion and disregarding the risk of losing money, a loan to be given to a needy neighbor, and commands the return of the borrowed money. About usury, he says nothing.

f) ST. IVO OF CHARTRES († 1117), in his *Decretum*, part 13a (Migne, P. L., Vol. 161, col. 805, 806), compiles canons and laws about usurers and moneylenders. There, after chapters prohibiting all clergy from lending at interest, chapters 19 and 20, taken from the Code and Capitularies, prohibit everyone from practicing “wicked usury” and from demanding compound interest.

g) ST. BRUNO OF ASTI, who was Bishop of Segni († 1125) a) On *Leviticus*, Chapter 25 (Migne, P. L., Vol. 164, col. 459), laments that the poor are tormented by Christians with “oppressive interest”: “We often see, with a small amount of money borrowed, the entire assets of the poor suddenly devoured.”

h) On *Deuteronomy*, Chapter 23 (M. Vol. 164, col. 528), “You shall not lend to your brother at interest... These words are full of piety and love, reminding us to assist those whom we should love as our own kind and of the same religion, without interest. Hence, in both the New and Old Testaments, moneylenders are condemned.”

After carefully considering all of the above, these points seem to us to be firmly established concerning the force and authority of the Church Fathers on this matter:

a) There is no consensus among the Fathers that compels us to abandon the obvious or self-evident meaning when interpreting passages of Scripture. Specifically: z) Concerning the Old Testament, different Fathers give different interpretations to passages; many (like Clement of Alexandria, St. John Chrysostom, and, concerning *Leviticus*, St. Jerome) understand the prohibition as being limited to one’s brethren; these passages are more often related to precepts of humanity and mercy than justice, thus retaining their proper meaning; ß) Concerning the New Testament, quite a few have already understood the words of the Lord in the way that pleases modern interpreters. So did Tertullian, St. Basil, St. Gregory of Nyssa, and St. Jerome.

b) Lending at interest, with perhaps one or two exceptions, is not clearly argued against as being unjust.

c) They never directly consider the case where someone might ask for a modest interest. For the passages some bring up don't regard the amount of interest but its form, whether explicit (in money) or hidden (in goods). See the cited passages from St. Ambrose, St. Augustine, and St. Jerome.

d) Most would not be speaking accurately if they were understood to be prohibiting moderate usury as unjust. For no theologian denies the possibility, while maintaining justice, of even a poor person demanding moderate interest to compensate for the risk of losing the principal. However, the Fathers reject the excuse of risk. They themselves admit the risk of losing the principal, and it can hardly be absent when dealing with the needy.

e) But the usury, which the Holy Fathers unanimously condemn, appealing to Scripture, and which some, e.g., Lactantius and St. John Chrysostom, also argue against as unjust, are the inhumane rates that ruined the poor, and the appearance of beneficence masked great cruelty.

f) This false appearance of beneficence is their main argument. Among them, hardly anyone provides a more universal reason.

360. On usury in canonical laws and among scholastic teachers or classic interpreters of canon law. The matter seems to us to be able to be presented so precisely:

361. UP TO THE NINTH CENTURY, many decrees of councils, especially particular ones, and often under severe sanctions, prohibited only clerics from practicing usury and seeking what was called disgraceful profit. Neither in the Eastern Church did this discipline become stricter, so that the Quinisext Council (692) simply repeated the words of canon 44, from the apostolic ones, to be quoted immediately.

Of their number, canon 20 C. of Elvira (in Baetica), which in 305 or 306, ordered the layman, "who persisted in that iniquity, to be thrown out of the church." (Mansi II, 9.) However, Scipio Maffei, op. c. p. 123, suspects this reading; and indeed neither Ivo, Decreti, XIII, 12; Panormiae, III, 156 (Migne, P. L. t. 161, col. 805, 1167), nor Gratian, c. Si quis, 5, D. XLVIII, report the latter part of the canon, but only the former which coerces clerics with degradation.

Therefore, concerning clerics, already, among the canons that are said to be apostolic, 44th 1 thus decrees: "A bishop or deacon demanding usury from debtors, either ceases or is certainly condemned." Then the Council of Arles, in which, in 314, the entire western church convened, states: "Concerning ministers who lend at interest, it was agreed they should refrain according to the form given by God." (Mansi, II 472.) We will also give canon 17 C. of Nicaea I (325): "Because many established under the rule pursue greed and disgraceful profits... lending money at centesimal interest: the holy and great synod rightly judged that if anyone is found after this definition receiving usury, or any invention or in any way conducting business, or emolument, i.e. demanding sesquiple 2, or anything like that devised for the sake of disgraceful profit, let him be thrown out of the clergy and be alien from the rule." (Mansi II, 675).

2. IN THE MIDDLE AGES, a) Usuries, which the Council of Carthage (Carthaginense I, in 345) canon XII (Mansi III, 149) and Aachen in 789, canon 32 (Mansi XIII, Append. 165), had already deemed worthy of reproof even in laymen, were plainly prohibited.

In the acts of the Council of Calcuth (in England, 787, 788), the bishops generally state: "We also have forbidden usuries"; and more expressly Meaux (845), canon 55, instructs bishops to "Restrain all Christians from usuries and those whom they could not restrain otherwise, pronounce a canonical sentence upon them." (Mansi XIV, 831.) The matter becomes clearer from the Corpus of Canon Law. a) These words of Gratian, under Q. 3 Cause IV, at the beginning: "That seeking benefits beyond the sum is to demand usury... is proven" and under c. 4, "Behold it is clearly shown that whatever is demanded beyond the lot is usury", and under Q. 4 of the same Cause, at the beginning: "That neither clerics nor laymen are allowed to demand usury,... is proven", show the author of the Decree to be persuaded that all usury in any person is illicit. ß) Furthermore, in the Decretals 1. 5, t. 19, the decrees of Alexander III (1159-1181) and Urban III (1185-1187) openly condemn, whoever the author may be, the demand or reception of usuries, as opposed to the pages of both Testaments; and they command the restitution of that disgraceful profit. See, for example, c. 2, 5, 7, 9, 10, 13. In fact, c. Super eo, 4, Alexander III denies he can dispense in this matter.

b) Following the Third Lateran Council (1179) and the Second Council of Lyon (1274), usurers were identified, namely those for whom the extraction of usury became a form of art and a customary way of life.

"For in almost all places," says the Third Lateran Council, c. 25 (Mansi, XXII, 231), "the crime of usury has grown so much that many, neglecting other businesses, exercise usury as if it were lawful, not paying attention to its condemnation in both Testaments." Thus, it excludes manifest usurers from communion, denies them ecclesiastical burial, and forbids accepting their offerings. These sanctions were confirmed by the constitution of Gregory X during the Second Council of Lyon, where the Fathers, "Wishing to suppress the abyss of usury, which devours souls and drains resources," also prohibit renting houses to foreigners who wish to use them for practicing usury (Mansi, XXIV, 99).

Despite the increasing plague, at the Council of Vienne (1311), it became necessary to condemn administrations that, sometimes even with sworn oaths, approved of usury. Further, a doctrinal declaration was issued, stating: "Indeed, if anyone falls into the error of presuming, with persistence, that practicing usury is not a sin, we decree him to be punished as a heretic." C. Ex gravi, unic., Cl. De usuris (V. 5).

c) At the same time, it was necessary to restrain deceit and frauds committed even by clerics and to suppress concealed usury. See, for example, 1. 5 X t. 19, c. 1, 2, 6, and several others mentioned by Gaggia, cited article.

It's noteworthy how Pope Sixtus V, in his "Detestabilis avaritiae," while condemning a certain type of partnership tainted with the stain of usury, describes this plague: "The abyss of usury," he says, "is hateful to God and men, condemned by the holy canons and contrary to Christian charity" (Bullar., p. 4, t. 4, p. 263).

3. For quite a while, Jews were somewhat permitted to practice profitable usury.

However, this tolerance or impunity in the external forum, which doesn't imply approval, was denied to them by Urban III (1185-1187) and by St. Louis, the king. The Fourth Lateran Council (1215) only barred them from severe and excessive usury; however, the gloss (to c. 18, X. V. 19) and juristic interpretations didn't grant them even moderate usury. Whether they complied with such is questionable. Regardless of how this law is interpreted, Jews did not cease from seeking usury, and some permits in later ages even allowed them a not insignificant interest. Yet, Gaggia asserts that eventually, Jews were also encompassed under common law.

4. a) In canonical laws themselves, there's no formal mention of some tempered usury, as is openly used today. Conversely, documents of that time and the very tone of the decrees indicate that they were addressing biting usuries that afflicted the poor.

As the minimal usury, one could consider the centesimal paid monthly (12 p.c. Cf. Hefele, *Conciliengeschichte*, 1, p. 406). Gaggia mentions, in the 14th century, interests of 23, 25, 37, 40 p.c. The severity of usuries is evident from the decrees of the Council of Nicaea, Lateran III, IV, and Lyon II.

The laws do not explicitly state that all usury is contrary to justice. There is hardly any external evidence of any title, as for example, c. 19 X t. 17. 1. 5 3. b) However, Scholastic theologians and canonists have refined these reasons. While examining the reasons and methods, they unanimously taught: a) It is inherently contrary to the nature of a loan to be the cause for demanding interest; b) For this reason, any usury opposes justice; c) However, there are reasons external to the loan for which it would be permissible to stipulate more than what was given; d) Moreover, there are other contracts, such as annuities and partnerships, through which someone could legitimately profit from their money:

Already with St. Thomas Aquinas, all reasons for usury that would be demanded purely because of the loan itself are condemned as unjust. This is easily derived from the principles of maintaining equality. The Subtle Doctor (Duns Scotus) agrees, so we have a consensus between both schools of thought. Subsequent classic theologians of the Society of Jesus, like Molina, Lessius, and C. de Lugo, follow this. However, the latter, in n. 9, admits that the matter is prone to difficulties and cannot be clearly derived from the Scriptures.

Among the canonists, the consensus is similar. But even with St. Raymond of Peñafort, in his *Summa*, 1. 2, t. 7, we find a definition of usury that encompasses all interest. They did not immediately find a reason for its dishonesty. Thus, Innocent IV († 1254), in his commentary on the five books of the Decretals, after stating that usury is condemned in both Testaments, argues from the countless evils that would arise from a license to lend at interest. However, he adds: "Some also say that usury is prohibited more because it is against charity and piety, with which I am bound to assist my neighbor, than because of the evils that follow." Henry of Ostia († 1271), in his *Summa Aurea*, defines usury even more precisely than St. Raymond: "Anything added to the payment of a loaned item because of the item's use, through an agreement, or with this intention in the contract, or demanded afterward." The reasons he gives for its illegality are that a loan involves a transfer of ownership, and there's no use of an item

distinct from its consumption. The Abbot of Panormitan († 1453), in his lectures on the Decretals, using Innocent IV's reasoning, thinks it better to argue that interest is against the nature of things. Therefore, jurists began to use similar reasons as theologians. See Pirhing, Reiffenstuel, Schmalzgrueber, among others.

c) This teaching of the school was approved by Benedict XIV in the famous Encyclical "Vix pervenit" (November 1, 1745), in which, after convening a council of theologians, he meticulously presented and defined the points to be upheld in this matter. The occasion for writing arose from controversies surrounding a loan contract with a stipulation of interest at 4% per annum, initiated around 1740 by the city of Verona; and specifically, it seems, from the writings of Scipione Maffei, which he dedicated to the Pope in honor of their friendship. However, the Holy Pontiff does not declare that he condemns this particular contract and does not reproach anyone, but presents the matter dogmatically. Note, however, that this letter was sent only to the bishops of Italy. Much later, on July 29, 1836, the Holy Office, with the approval of Gregory XVI, seems to have incidentally declared that these letters pertain to the universal Church. Nevertheless, these letters could not become an infallible definition. Therefore, we believe they hold significant, but not supreme, authority.

<< I. The nature of the sin

The teaching is contained in five points. The sin, called usury, which has its proper place in the loan contract, lies in the fact that one wishes to receive more in return than what was lent, solely because of the loan itself, which by its nature only requires an equal return. Therefore, any profit beyond this equal amount is illicit and usurious.

« II. Furthermore, to purify this stain, no justification can be invoked, whether because the profit is not excessive but moderate; not large, but small; or because the one demanding this profit solely because of the loan is not poor but wealthy; nor would he leave the loaned sum idle, but would use it most profitably to expand his wealth, to purchase new lands, or to engage in profitable business. Contrary to the very nature of a loan, which necessarily involves equality in what is given and returned, anyone who, once this equality is established, still dares to demand more from anyone because of the loan itself, is found to act unjustly: therefore, if he has received more, he will be obliged to return it under the obligation of justice, which they call commutative, whose role is to faithfully maintain and accurately restore the proper equality in human contracts. »

III and IV. In these sections, it's acknowledged that compensations can justly be sought for external titles and that there often exist just ways to profitably invest money in contracts that are entirely different in nature from loans. Therefore, Catholic doctrine does not hinder the prosperity of commerce.

V. Here, it's denied that there's always an opportunity to make a just profit from money, so that it would always be permissible in practice to receive a moderate increase. "Indeed, if anyone thinks otherwise, they are undoubtedly opposing not only divine teachings and the judgment of the Catholic Church concerning usury, but also common human sense and natural reason." Reasons are added, both because we often have to help our neighbor with a simple loan, and because often "apart from one loan,

there can be no place for another true and just contract." Relevant condemned propositions are also referred to.

I. Alexander VII, on March 18, 1666, among the condemned and prohibited propositions, at least as scandalous, presents this in n. 42: "It is lawful for the lender to demand something beyond the principal if he binds himself not to demand the principal back until a certain time."

II. Innocentius XI, among 65 propositions similarly "at least as scandalous and pernicious in practice" condemned by him on March 2, 1679, has two on our matter: a) n. 41: "Since cash in hand is more valuable than a promise, and no one values present money less than future money, a creditor can demand something beyond the principal from the borrower, and be excused from usury on that account;" b) n. 42: "It's not usury when something is demanded beyond the principal as a debt of goodwill and gratitude, but only if it's demanded as a debt of justice."

5. A SOFTER DISCIPLINE, a) It was prepared by a) The establishment of Montes Pietatis, which arose in the 15th century in Italy to help the poor oppressed by the usury of the Jews, by lending money against accepted collateral. They soon began to demand a small interest to compensate for their effort and other expenses, and then (Mixed Montes) to more easily collect money that could then be lent to the poor.

This demand for interest was the origin of a sharp controversy even among religious orders. The Franciscan religious, especially those then called Observants, led the defense, winning the cause, so that the Lateran Council V (1512-1517) solemnly approved Montes where only compensation for expenses was required. This title for demanding an addition was different from strictly such interest, but at the same time, it gave an image of moderate interest. More, as is clear, was disputed about the Mixed Montes, which some condemned, others tried to excuse in various ways, especially when the common practice had prevailed in Italy of profitably depositing money in Montes. (See Zech n. 339 and following.)

B) Various purchase of annuities, which at first glance seemed similar to usury and made the profitable use of money more frequent.

7. By civil statutes or customs, which in various places indulged in the demand for all moderate interest.

Thus, in Germany, from the 16th century, there was a recognized custom of tolerating a demand of 5% interest (Zech, § 248). Indeed, there wasn't unanimous agreement on its force and efficacy. Zech, § 252, describes it in such a way that such usury would only be owed after a delay and based on the presumption of an external title. However, more universally, Pichler S.J. (1670-1750), who achieved great praise in interpreting canonical law, attributed this force to law or custom, whereby for public reasons, it could make moderate usury lawful. For he says: "Profitable usury is prohibited by natural and divine law conditionally and when fraud, greed, or cruelty intervenes, also when usury is excessive, or 'biting', as it's called, or overly burdensome with oppression of one's neighbor... but not absolutely and when fraud, greed, oppression, and injury to charity are absent, and moderate usury is demanded according to the

statutes and customs of places.” Thus he himself in Decree l. 5, title 19, n. 11. He was preceded by Pasqualigus († 1664) of the Theatine Order, who in Moral Decisions 183, granted a similar power to the Holy Pontiff.

d) By the very growth of trade and commerce.

Lessius, in chapter 20 n. 123-127, allowed any merchant, even if they gained no profit from it, to demand a price due to the obligation of being without money for a certain period. Among merchants, this burden is inherently valuable.

b) It is formally contained in several declarations, both of the Sacred Penitentiary and, with the approval of the Holy Pontiff, the Sacred Office, which were issued from the year 1830. In these, without regard to a specific external title, or even civil law, it is declared that the faithful, including clerics and religious, are not to be disturbed if they give money at a moderate interest, as long as they are prepared to follow the mandates of the Holy See. However, the Holy See did not want to define a fair amount universally.

These responses can be found either in the Collection Lacensis, Vol. 6. Appendix to Synod Pudicher. col. 677; or in Collection Prop. Fid. n. 2140 and following, or in the Handbook of R. P. Bucceroni. Note, for example, the response of the Sacred Office to the Bishop of Rhedon, August 18, 1830, along with the response of the Sacred Office to the Bishop of Viviers, who was surprised that in the previous description, there was no mention made of the title of civil law (this response, August 31, 1831, can be found in Gury-Ballerini, I, 878, or Lehmkuhl, I, 1103, note 1); then the responses of the Sacred Penitentiary, February 11, 1832, and the Sacred Office, January 17, 1838, March 26, 1840, and February 28, 1871.

1. Greek and Roman Laws Allowed Usury. Regarding the severity of usury among the Greeks, see for example Maffei, p. 76 and following. Among the Romans (refer to Maffei, p. 91 and following), the Law of the Twelve Tables decreed: “let no one charge more than an ounce of interest” and several laws established a legal rate. Through a plebiscite, all interest was abolished; later restored, and in Roman law up to Justinian (who imposed a higher rate), centesimal usuries were allowed (they were called bloody because they equaled 12%). However, a loan in Roman law, by its nature, did not allow interest, but interest was contracted with an added stipulation.
2. Christian Laws Long Adhered to Canonical Standards. We’ve seen that in Germany, there has long been a departure from ancient severity, with either infinite or within certain limits, tolerated or even permitted usuries. In contrast, in France, actions were stricter than in Italy itself, and usury was prohibited by law until the decree of October 3-12, 1789.
3. In Our Laws, A Loan is Still Presumed to be Free, so that a positive stipulation of interest is required. For a long time, (according to the French law of September 3, 1807) parties could not exceed the legal rate, or 5% in “civil” matters, 6% in commercial matters. But in France, from the law of January 13, 1886, restrictions were lifted in

commercial matters; while in Belgium, from the law of May 5, 1865, the parties can freely agree on interest above the legal rate, which from December 20, 1890, is 4 1/2% in civil matters, 5 1/2% in commercial ones. However, Article 494 of the Belgian Penal Code punishes the malicious custom of exploiting, in demanding interest, the passions and weakness of the borrower. According to the recent German code: a) The gratuitousness of the loan is retained, insofar as interest is not due unless added by stipulation (art. 608); b) The legitimate interest is in itself 4% per annum; c) If the stipulation was for interest greater than 6%, the debtor has the right, after six months, to announce the repayment of the principal after another six months; and this option to free oneself in this way by paying such high-interest rates cannot be removed by contrary agreement. However, this rule does not apply to bearer debts (*au porteur*). d) Except for certain financial institutions, a pact made in advance for renewed interest (*anatocisme*) is void. See art. 246-248. Today, however, the very usefulness of laws that define the maximum interest rate and the method of curbing excessive usury is debated in various quarters. For example, see V. Brants, *Usury in Contemporary Legislation* (Bulletins of the Royal Academy of Belgium, 2nd series, vol. 30, no. 12, 1895).

362. On Usury According to the Opinions of Scholars

1. Ancient Philosophers Largely Disapproved of Usury. For instance, Plato (in "Laws", V. 742) and Aristotle (in "Politics", I, chapters 10 and 11) were both averse to any profit-driven exchange of money. Aristotle, in particular, ranked the profit from usury very low and found it quite unnatural. Other critics include Aristophanes (in "Clouds", v. 1283 and following), Cato (whom Cicero in "On Duties", II, chapter 25, equated the act of usury to murder), Seneca (in "On Benefits", book 7, chapter 10), and Plutarch (in "On Avoiding Debt"). However, Grotius believed that they were more critical of what is typically associated with loans rather than the intrinsic nature of loans themselves.
2. The Consensus of Scholastic and Canonist Doctors was Discussed Earlier.
3. Schismatic Greeks, at least from the 16th century, did not consider them intrinsically illicit (*Devoti*, Canon Institute, book 4, title 16, section 4).
4. The Catholic Doctrine on the Matter was not Entirely Abandoned by All Reformers of the 16th Century. Luther, Melancthon, and Zwingli condemned usury. In contrast, Calvin permitted the charging of interest from the wealthy. Calvin's teachings were systematically presented by his disciple Salmasius in his treatises "On Usury" and "On Bank Interest". Another well-known work on this topic is Charles du Moulin's "On Usury".
5. Subsequently, even Catholic scholars seemed to doubt either the force of certain arguments or the truth of the previously accepted doctrine. Pichler's opinion has already been mentioned. Another canonist, Engel (a member of the Order of St. Benedict, who died in 1674), admitted that the reasons commonly presented against usury seem rather subtle. He would rather argue based on the evils it

brings to the needy and the impiety of converting a charitable act, which a loan inherently is, into personal profit and the detriment of another. In the 18th century in Belgium, a significant controversy arose concerning usury, instigated by the Jansenists. Broedersen, a Catholic pastor from Delft, in his treatise "On Lawful and Unlawful Usury", leaned towards Calvin's view. The distinguished Catholic Scipio Maffei also held a similar view in "On the Use of Money". Benedict XIV, in his work "On the Synod", heavily criticized Catholic scholars who leaned towards the new views on usury. He stated that the Catholic Church's doctrine has always been that any profit derived purely from a loan is usurious and illicit, as confirmed by the unanimous consensus of all councils, fathers, and theologians. Scholars like Lessius, C. de Lugo, Schmalzgrueber, and others maintain that it's a matter of faith that usury is illicit, at least under positive law. They also believe that the prohibition of usury, grounded in natural and divine positive law, is beyond doubt. Therefore, it's surprising how C. d'Annibale wrote that there's no clear evidence, whether from natural or divine law, that usury is in itself illicit. He further inferred from the actions of the Catholic Church that the opposite might be true.

§ 2. Doctrinal Concepts

363. On Loan (Mutuo).

1. It can be described as: "A real contract in which a fungible thing is provided under the condition that the same will be returned in kind after a certain period," or more briefly: "A temporary concession of a thing consumable upon first use."

The first definition is primarily derived from Zech's work (op. c. Diss. I, § 30), which is in agreement with interpreters of Roman law and scholastic teachers. Since it is not defined in canon laws, it was necessary to extract its true nature from common usage and Roman law.

Three essential components are encapsulated within its essence:

a) Fungible Thing: This refers to an item that functions in kind, or where the specific item is of lesser importance than the general kind, e.g., grain or money. More precisely, it refers to items that are consumable upon first use, meaning one cannot utilize them without consuming them, either naturally (like consuming food) or civilly (like spending money). While the item itself doesn't necessarily perish, it is lost to you.

b) Transfer of that Thing to Another: This person has the right to consume it. Therefore, money or delicacies loaned for the sake of display, merely to adorn a table or shop front, are not objects of a loan. However, the item can be oil, wine, etc., and most often, it's money. The primary concern nowadays is regarding the loaning of money.

c) Obligation to Return in Kind After a Certain Time: This means returning a similar item in quality or goodness, not the exact item borrowed, and after a specific period. Because inherently, the one who lends money provides credit, meaning they can't demand their money back before a particular date.

Some argue that this obligation on the part of the creditor is the reason why a loan should be classified under bilateral contracts. Such is the opinion of R. P. Pesch (1. c. p. 57). However, since this obligation is more of an inevitable consequence of the transferred right and primarily ensures that this right is not violated, it's better to consider a loan as a unilateral agreement.

2. Ownership of the loaned money belongs to the borrower: Indeed, they genuinely have the right to use and dispose of the money.

In ancient times, this was so clear that they derived a fictitious etymology for the term: "The act of lending is called 'mutuo' because what is mine becomes yours." However, some modern thinkers have begun to doubt this. But when they keenly want to distinguish between the ideal essence, the value of a thing, and its physical existence, or when they argue that this money is called "borrowed money," etc., they are doing nothing but obscuring the clear truth with fiction. This truth boils down to: the borrower is obligated to pay; therefore, the creditor has not a right to the thing but a right to its value. This right, having some weight worthy of estimation, depending on how certain the promised payment seems, is therefore counted among the assets of the estate and can be referred to by the name of value. However, by the same logic, the very price of something sold is already considered to augment the seller's estate based on the hope of payment. Would you then say that the actual coins have already changed ownership upon agreeing on the price? For us, it is sufficient that there's no doubt that the borrower can physically dispose of the thing, which allows us to conclude what we want about the gratuitous nature of the loan. See RR. PP. H. Pesch, 1. c. p. 44, 45, 55, 56, and Lehmkuhl I, 1091, and, from the opposing side, R. D. Funk, Tüb. Quartalschrift, 1879, p. 25-27 and Ballerini, Opus morale, t. III, p. 593, 594, 652-656.

3. From this, two other corollaries immediately follow:

a) In a loan, the risk of the thing is borne by the borrower. This is also proven by another reason: a kind or category never perishes; b) The profits of the thing, if they are said to exist, are acquired by the borrower, as the thing yields to its owner.

364. **On Usury.**

365. In its general acceptance, usury denotes anything that is to be paid by the borrower beyond the principal amount due to a formal or implicit agreement. By "anything," I mean whether it's money or any other valuable good, regardless of the amount.

In this perspective, usury is inherently excluded from loans in Roman law, as can be inferred from the word "usura" or "Tókos", used by the Romans and Greeks to describe any interest. In contemporary languages, we distinguish between "l'intérêt" and "l'usure" in French, "Zins" and "Wucher" in German, "interest" and "usury" in English, and "interesse" and "usura" in Italian. By this reasoning, the Church prohibited charging usury in loans.

2. In a more specific sense, in some laws of earlier Christian eras, usury referred to "profit from a loan due to or exacted by an agreement", i.e., from the use of a consumable good. In this sense, usury was outright condemned by the canons of the Church.

This aligns with the definition given by Leo X in the Constitution *Inter multiplices* approved by the Fifth Lateran Council, which described usury as seeking profit from a consumable good without labor, expense, or risk.

3. The sin of usury can be committed by demanding a greater sum than what was given, attaching unjust conditions to the repayment, or by explicitly demanding interest without or beyond a legitimate reason. Here, usury is understood in its strictest sense.
4. Types of usurious gain:
 - a) **Real and mental**, much like in simony: the mental form refers to one who, without an external formal agreement, intends to oblige the other party to pay interest based on the loan given.
 - b) **Formal or open**, and concealed, which is disguised under the cloak of another legitimate contract. Historically, the famous Mohatra or Baratra involved a deceptive buy-sell arrangement, where one would sell goods at a high price and buy them back at a much lower price, effectively hiding the interest.
 - c) **Simple interest** and **compound interest**. The latter, also known as “interest on interest,” was termed anatocism.
 - d) Based on quantity, usury was classified as *unciariae*, *centesimae*, etc. The maximum interest that could be demanded in Roman law was *centesimae* (or 12% annually). This was equivalent to an “usurious as” (consisting of 12 *uncias*), or a unit, to which lighter rates were referenced. The names of these rates were derived from fractions of the as, such as *fenus ex deunce* (11/12) equating to 11%, and so on down to *uncia* or *unciariae* (1/12) equaling 1%.

365. On the Sterility of Money.

A thing is said to be truly sterile or unfruitful when it bears no fruits, either in the strict sense, like the fruits of a tree, wool, offspring of sheep, or in a broader sense, which provide utility distinct from its consumption or destruction, like the use of a house for dwelling or the function of a knife blade. The use of a sterile thing is said to consist of its consumption because the use is its consumption. (II. II, q. 78, art. I c.)

Such things are consumed upon first use; and since they are typically fungible goods, the two terms are often used interchangeably.

2. The very destruction or consumption of such a thing can either generate other things, either similar or of greater value, or directly diminish wealth. Thus, this consumption is distinguished as fruitful, like coal in a workshop that generates movement, or sterile, like coal used to heat a room.
3. The metal from which money is made, although it does not bear fruit (hence the saying: Money does not beget money), has a use separate from its consumption. However, this is not the primary use of money. Similarly, there is a “secondary use of money... if one were to display stamped money”... (which can be legally sold); “but the principal use of silver money is the distribution of money in exchanges,” as Aristotle says in his *Ethics* IV, 7. By this use, while the money physically remains, it is lost to the possessor.

Thus, money is inherently sterile; but through exchange, it becomes everything into which it is converted. Therefore, the economic value of money or its use is to be judged by the things that can be obtained or are obtained for money, either in a specific case or generally. In this way, St. Thomas wisely pointed out, In V. *Ethics* lect. 9, at the end: “It makes no difference whether five beds are given, or as much as five beds are worth.”

In this matter, the remarkable words of the Philosopher in V. Ethics, praised by St. Thomas in 3 D. 37, q. 1, art. 6, should be noted: "The use of money does not have a measure of utility from the money itself, but from the things that are measured by money."

366. **On External Titles.** An external title is specifically referred to as a cause that adds to the essential nature of a loan and is additionally associated with the unique condition of the creditor or debtor, by which a modest interest can justly be demanded in the loan. Therefore, the reason for which a surcharge might incidentally be demanded by all money lenders, even if externally added to the loan, will not properly be called an external title.

Thus, to justly demand interest on this title, it must genuinely benefit you, and the debtor, being aware, must consent to this payment.

These titles, named after their esteemed author, Paulo de Castro, are sometimes called Castrense requirements. They are mainly:

1. **Risk of the principal:** when there is fear of either a loss of the principal or difficulties and expenses in recovering it. Since taking on such a risk has value, moderate interest can be collected even if the principal is later returned. Some rightly consider this interest as a kind of security that would be returned as soon as the money is returned, and the risk is gone.
2. **Conventional Penalty:** proportionate to the debtor's culpable delay. It is not about a penalty that compensates for the foreseeable or probable damage that any delay could cause the creditor.
3. **Emerging damage and missed profit:** When it's likely that the creditor, due to a lack of money, will suffer damage (e.g., if he had repaired a house that now collapses), he can stipulate to be compensated later for the entire subsequent damage, or even, based on risk assessment, set a fixed interest to be paid annually. Similarly, someone wanting to do business and needing money to do so can stipulate that, based on the assessment of hope and risk, and after deducting expenses, he should be paid moderate interest.

The consensus is not unanimous that St. Thomas Aquinas admitted this title. Refer to his works on usury, and his Summa Theologica II, II, q. 78, art. 2, ad 1; q. 62, art. 4.

There's hardly any difference from these titles and the cause that St. Alphonsus considers probably just, which is derived from the long period for which the loan is given.

5. **On the title of civil law:** Much has been debated since some deny that by civil law an unjust gain can be made honest. Others invoke the right of high dominion, from which the Prince has the ability to transfer ownership for a just cause pertaining to the common good. Some even reject this very fact, not conceding that the legislator intended to supplement a non-existent title, but merely, based on the presumption of a real title, allowed interest.

Nothing in this matter has been defined by the Church. It does not seem to us that the Prince's ability to grant some interest can be denied, if indeed for the common good this should be encouraged as a reward for the willingness to lend. Such a necessity will hardly arise except in those circumstances in which we will soon make it generally lawful to lend money at interest. This is the opinion of R. P. Lehmkuhl I, 1102, whom you can refer to about all these titles. Ballerini-Palmieri also discusses these at length in III, p. 606-624.

367. **Definition of the Question.** I. WE ARE NOT DEALING WITH: a) External titles, or concerning moratory and compensatory usury, as classic scholars have excellently dealt with them, and the controversy has been resolved by the consensus of the wise; b) The obligation of charity, whose principles are easily known, but concerning the necessity of justice;

c) The specification of the sin of usury. This matter is quite clear, as it is established that mercy is offended if the poor are oppressed; however, any injustice, if it exists, is theft or even robbery depending on whether the item was taken from the owner against their reasonable will, or if physical force was even exerted upon the person.

2. THE REAL QUESTION IS: a) Whether or not demanding lucrative usury is unjust, i.e., against the due equality in the pact where a fungible item is credited, just as demanding an excessive price is contrary to maintaining equality in a sale.

b) How the discipline of the Church should be interpreted and defended against slanders. For its laws on usury seem to incur various criticisms and, at first glance, somewhat conflict with each other.

§ 3. Many explanations by Catholics are reviewed.

N.B. Regarding these two questions, various and numerous opinions have emerged among Catholics. We will attempt to refute them, at least indirectly, in our conclusion. However, to avoid complicating the demonstration, it's worth specifically discussing these views here, noting their focus and the particular flaws or inconveniences they possess.

We won't mention the opinions we address directly here but will reserve them for the next section.

368. **The stricter opinion.** In France, there are still some who outright condemn the modern practice of charging interest. They believe the Church has not endorsed this practice, thinking that, considering the hardness of hearts, the Church merely prudently turns a blind eye and reluctantly tolerates what it could not prevent. This is the view of R.D. Julius Morel, in his work "Du prêt à intérêt" and of D. Modeste in "Le prêt à intérêt, dernière forme de l'esclavage." Bishop Lachat of Basel seems to have held the same view.

However, as will be evident from the argument of the conclusion, the style of the Roman Curia suggests there's at least a probable reason that today's lending is considered honest.

369. **Explanation based on intention, or the system of double contracts.** While Ballerini did not come up with this system, he supports and elaborates on it in his theological work. According to this view, money can be lent in two ways: either with a generous intention, in which case it's a loan and intrinsically free of charge; or, with a changed motive, almost as if renting out money, in which case the interest is a just rental fee. In the past, the loan was common, and the Church rightly defended its essential nature as free. However, this doesn't mean the Church disapproved of lending money in the manner practiced today.

If the matter was merely about reconciling with Scriptures and testimonies of the Church Fathers, this doctrine might not contradict "from the outside." Indeed, as we've seen, the precepts of holy writings are precepts of humanity, and nothing is more criticized by Church Fathers regarding usurers than the fact that under the guise of charity they bring great distress to the poor and afflicted. But consideration must also be given to the universal prohibition of the Church and the doctrine that prevailed for centuries in all theological disciplines.

a) **This explanation openly contradicts the Catholic doctrine.** For the price that the lender demands, what is it if not the price for using the lent item? Therefore, anyone who allows the lending of money recognizes the price for its use. But doctors and jurists primarily denied that the use of money, distinct from its consumption, had a price, thus establishing that a loan was naturally free of charge.

b) **Furthermore, it's contrary to the Church's mindset.** In Roman law, a loan was not essentially free. It was permissible to combine a loan with an interest stipulation. Therefore, Ballerini himself is forced to admit (ref. 1. c. n. 281) that the very nature of the loan, as he understands it, deviates from Roman law. How unlikely is it that the Church, which never defined a loan and originated and propagated within the Roman Empire, would adopt a meaning for the term loan that's foreign to this legal tradition?

c) **Moreover, this explanation cannot stand with decrees that condemn even disguised usury.** In such cases, one can't possibly feign a benevolent intention, nor even name the contract that would necessarily be gratuitous by intention. Nor does it align with Chapter 10 of "Consuluit, De usuris," where this very intention of profit is considered corrupt. Nor with the Encyclical "Vix pervenit," which explicitly denies in Proposition 5 that, apart from a loan, there are always other just contracts by which one might legitimately ask for an additional charge. Why resort to those contract models if it were sufficient to simply intend to lend money?

d) **This explanation doesn't preserve the Church's honor.** For those who charged interest on loans clearly showed they weren't driven by a generous intent. They would mistakenly call a loan what was, in reality, a rental of money (if a loan from this intention was essentially free). Therefore, as R. P. Palmieri astutely notes in his commentary on B. P. III, p. 663, the Church would have severely reprimanded this linguistic error. And the Church would have overlooked the very common practice of one contract, retaining its name, transitioning due to a changed condition or intent, into another type of transaction. Thus, a loan, when a fee is established, becomes a rental; a mandate, unless free, transforms into another business form (§ 13 of Institutions, De Mand. III, 27).

e) **Therefore, Bossuet rightly rejects all lending of money in Proposition 6;** Benedict XIV, in "De Syn." 1. c. n. 2, asserts that this rationale for justifying usury, cited by Salmasius, is refuted by many heretics who still argue that usury is lawful. And Zech, in Dissertation 1, n. 196, with very strong words (though we by no means

attribute this mindset to Catholic men like Ballerini) criticizes the proponents of this view: "It suffices... for refutation that this clear matter, through the proponents of this doctrine, is entangled in various phrases, to prove that usury is never committed... Thus, the question of usury is merely about the name, and hence all that's established against usury in sacred scriptures, Council decrees, and the volumes of the Church Fathers should be considered pointless, empty, and laughable."

370. **Explanation based on the purpose of the loan.** There are those who believe that a loan of money to be consumed is inherently free, but not a loan of money that will be invested profitably or usefully (Loan for consumption, loan for production). Therefore, they justify modern lending practices partly because, if it's a non-productive loan, an external title usually benefits the creditor; and partly because most loans today are for profit.

This explanation can be conveniently adapted to the sayings of the Church Fathers; in fact, a few points might even seem to favor it based on one or two of the Fathers. Moreover, its application doesn't seem dangerous. When money is loaned to the wealthy or businessmen, there's rarely an absence of an opportunity for another agreement (like censuses or partnerships) that yields honest profit from the money. Lastly, the productive destination of the loaned money can be considered among the factors that support the true solution, as we'll see.

However, we cannot agree with this explanation. It formally contradicts the Encyclical "Vix pervenit", which states: "No argument can purify this stain (of usury)... based on the fact that the one from whom this profit is demanded solely because of the loan is not poor but rich, and is not going to leave the loaned sum idle, but is going to use it most effectively to expand his wealth, either by buying new estates or by engaging in profitable businesses." It also goes against the principle that we demonstrated with the common agreement of the Catholic school in the earlier thesis: the personal benefit of the acquirer, i.e., here the borrower, cannot be counted in the transfer of the item.

371. **Explanation based on the presumption of a just external title.** Today, given the easy profitable use of money, and with many being exposed to the various risks of often lightly attempted ventures, there's a presumption in favor of the creditor of an external title that can be compensated with moderate interest. This is the view of R. P. Weiss, O. Pr. in the cited work, p. 691-694, and R. P. Castelein, in "Institutiones philosophiae moralis", p. 404-405, does not oppose this.

Rather than being false, this explanation seems to us insufficient.

Because a) The profit that is received formally due to an external title relies on the specific circumstances of the one giving the loan, with such losses, lost profits, risks, etc., and therefore requires an accurate assessment and prudent definition of compensatory interest, different in each case. If it is proven that there's no external title, the presumption gives way to truth, as noted by Reiffenstuel and Schmalzgrueber. And how often it would yield to the contrary truth today is clearly shown by Pesch, who brilliantly exposes the shortcomings of this theory.

b) Nor does this opinion explain how, in responding, the Church wasn't concerned about the truth of the title, could omit the question of the title of civil law, and how it could admit some uniform rate, not adjusted to the conditions of each specific loan.

372. **Explanation based on civil law.** But if, along with others whom Gury in "Theol. mor." I. 863, 864 seems to agree with, you invoke the latter explanation based on the title of civil law, which, for the common good, so that loans would be more easily granted, would allow a certain interest, we will show with the very proof that we are not pressed by the necessity of such an escape. Moreover, it's not clear that the legislator intended for the common good to make up for the lack of a just title, since the legal permission can be understood as civil permission, or immunity in an external forum, made due to the presumption of a just title, and by which each person is left to their own conscience. See Reiffenstuel, Schmalzgrueber. And what proves that today's legislators were more motivated by this consideration than the ancients? From Roman law, no excuse for conscience was sought.

ARTICLE II. Formula and Arguments for the Conclusion

THESIS XXVI

It is unjust to seek any profit from a loan taken in duplication.

However, given the current condition of society, it might be acceptable for everyone to believe in lending money under moderate interest.

The Church's former severity and its current leniency are free from any blame.

373. **I. State of the Question. I. PURPOSE OF THE THESIS.** In this thesis, we affirm three things. In the first part, we demonstrate the intrinsic evil of the sin of usury according to its genuine concept. Next, we defend the universal permissibility of moderate lending in the current circumstances. In the last part, we strive to counteract the accusations that have traditionally been directed against the Holy Mother Church in this matter.

2. OPINIONS. The first part is posited:

a) Against Molina and heretics inferior to Calvin in his time, who believe that usury is forbidden only when it goes against charity;

b) Against some Catholics of our time: a) Some directly deny that usury from loans is intrinsically illicit; and C. d'Annibale clearly supports this when he argues in "Summula II, 533" that there's no law confirming its immorality; b) Others indirectly profess a similar conclusion, after altering the rationale of either the loan itself, like those who agree with Ballerini, or the sin of usury, as suggested by the renowned professor Funk.

Those opposing the second part include:

- Socialists, who view all interest as unjust and deny that money can be profitably spent unless by someone who also contributes labor;
- Some Catholics, who claim that canonical prohibitions are still in effect.

The third part, as evident, only offends non-Catholics and rationalists who, adhering to liberal ideas, criticize the Church for having previously hindered the growth of arts or business. For those who take pride in their Catholic name, they make various efforts to defend the Church.

3. TERMS EXPLAINED.

“Injustice” refers not only to what is contrary to charity or what is prohibited by positive law,

“All profit” means not only excessive or biting usury. It’s clear that it doesn’t matter how the profit is sought, whether in money or another means, so it encompasses anything that places a justifiable burden on the debtor.

“From a loan” means due to the nature of what is contained within a loan, that is, the temporary provision of something consumed upon its first use. See 363. We deny that there’s a legitimate reason for making a profit in this. However, we do not argue that something in the loan contract intrinsically opposes making a profit, as long as there’s a sufficient reason.

“Taken in duplication”: this means not due to what can happen with a loan either in a specific case or universally for a certain condition of the state; nor due to the grateful sentiment of the one who benefited from the loan. We mean by the nature of the loan as such, not by the nature of a specific loan.

“Given the current state of society”: Like almost all Catholics, we consider the circumstances of society. This reasoning, not content with the type of loan, indicates something external and contingent that pertains to the nature of the loan as such.

“Everyone”: Sometimes they can be prohibited by charity, where there’s a command to help one’s neighbor.

“May believe”: This means permitted by divine law. Furthermore, one must consider human law.

“Lend money”: We use these less defined words to skip the current discussion on whether or not this agreement can retain the name of a loan. In French, it would be: “La concession de crédit, le prêt d’argent.”

“Money”: While it doesn’t inherently oppose lending other items in a similar way, we don’t believe the same reason exists today for other fungible goods. For instance, loans

of flour or milk are made in rural areas for a short time, which, by use and common estimation, are not deemed repayable with some usury.

“Under moderate interest”: One must always maintain a just price, which, when exceeded, commits the sin of usury.

“The Church’s former severity” in universally forbidding the collection of interest,

And its “current leniency” in seeming to universally permit lending,

Are “free from any blame”: whether of error, inconsistency, or opposition to the temporal happiness of society. All points of complaints fall under this.

4. THESIS NOTE. a) To us, it seems theologically certain, not only in the part where the laws of the Church are said to be immune from error but also in arguing against the injustice of profit sought from a loan. However, we concede to the authority of writers of our time who, with good intention, have obscured this truth, and we refrain from condemning opinions contrary to our first conclusion.

b) We regard the rest as simply certain. Indeed, our explanation of today’s practice is only given as more probable.

II. Proof.

374. A. FIRST PART. It is unjust to seek any profit from a loan taken in duplication.

Arg. 1. From ecclesiastical documents. a) The Church, through universal laws which prohibited any statutes against faith or morals, forbade any profit from loans, so much so that the Supreme Pontiff could not grant a dispensation in this matter.

A. Such a prohibition implies that such profit is inherently unjust.

E. From the infallible documents of the Church, we deduce the injustice of any profit taken from a duplicated loan.

To support the major premise, it is primarily noted that the collections of decrees of Gregory IX, the Sixth Book, and the Clementines are authentic. Thus, every single law contained in these collections, regardless of their original source or meaning, gains the force of universal Church laws upon their promulgation and must be interpreted as they are found in the Corpus of law. Furthermore, it’s a certain theological doctrine that the universal laws of the Church are infallible in this manner, meaning they cannot establish anything against faith or morals.

Now, the prohibition of all profit from loans is found in c. Praeterea, 7, On Usury, which after the command: “Moreover, forbid your parishioners from receiving usury,” prescribes penalties for both clerics and laypeople. This is made clearer in c. Consulit, 10, under the same title, where the Supreme Pontiff, when asked about the legality of

one “who, otherwise not intending to give a loan, lends money with the intention that, even if all agreements are voided, he might receive more than the principal,” or one “who does not otherwise grant the favor of an oath unless he, even without demanding, receives some profit from it,” defines the matter as: “Such men, for the intention of profit they have,... are judged to act wrongly, and they are effectively led, in the judgment of souls, to restore what was thus taken.” Moreover, this is entirely confirmed by the long-standing consensus of theologians and canonists who, for many centuries, attributed this force to the canonical sanctions on usury.

The prohibition, moreover, is such that the Supreme Pontiff could not grant a dispensation. This is conveyed in c. Super eo, 4, of the same title, “Regarding this, we do not see that any dispensation can be made.” The matter at hand was usury that would be permitted for the redemption of captives.

For the minor premise. Such a prohibition indicates a divine and indeed natural law. If it were not divine, the Supreme Pontiff could dispense it; it’s natural because, under the new law, there is a general canon that we are not bound by a positive divine precept except concerning faith and sacraments (See Suarez, *On Religion*, tr. 2, l. 2, n. 8). A universal prohibition of natural law in this matter cannot be explained without violating justice. For in the case of a rich person, the obligation of mercy ceases. Moreover, the obligation of restitution, which is often emphasized, can hardly be defined otherwise.

b) A very weighty confirmation comes from the Encyclical *Vix pervenit*, which, initially directed only to the Bishops of Italy, was subsequently sent by Benedict XIV himself and by Roman Congregations to other regions. Thus, for almost a century, it was the constant standard for deciding cases in the Church. In it, the Pontiff testifies that he resolved the matter after a thorough examination and the unanimous opinion of an assembly of most distinguished men called for the purpose. C. d’Annibale, II, 532, 533, frees himself from this burden by saying that “its genuine sense was debated back and forth”, but these words are lightly set down. For nothing is clearer than the very letter of the document, as R. D. Funk admits. And from reading the doubts proposed to the Roman Congregations, it’s clear that the only controversy was whether the Encyclical should be understood excluding or even including the title of civil law. See in the *Collection of the Faith’s Propositions*, n. 2140.

Indeed, the said Encyclical explicitly contains our position:

“The type of sin called usury...,” it says in Prop. 1, “is grounded in the fact that someone, from the very nature of a loan (which by its nature requires only as much to be returned as was received), wishes to receive more than what was received and thus contends that, beyond the principal sum, some profit, due to the very reason of the loan, is owed to him.”

And in section II: “Against the nature of a loan, which necessarily concerns an equality in giving and returning, he is found to act who, having once established that equality, still dares to demand something more from anyone by the power of the loan itself (to which an equal amount has already been adequately given).”

Arg. 2. From reason. It is against the equality of justice to ask for a price for a use that does not exist.

A. This is done by one who intends to profit by the power of the loan.

E. Whoever intends to profit by the power of the loan violates the equality of justice.

The minor premise is proven. The granting of the principal thing is compensated by the return of a similar thing in quality and quantity, as in a lease, a horse is returned for a horse. The risk of losing the thing, in itself, does not become greater than before; or rather, it is reduced since the borrower also covers accidental loss. Indeed, this security can compensate for the inherently minimal inconvenience that one endures from the lost opportunity to use the thing for some time. For this deprivation often is not burdensome, as if, due to a brief interval or abundance of the thing, the lender would in no way need the part he lent. And today's prevailing practice of renting, in large banks, a safe where money is securely stored, gives a splendid confirmation of this assertion.

If it happens that lending becomes burdensome due to combined risk or deprivation, this compensatory interest will be justly sought, but not by the power of the loan.

It remains, then, that interest sought by the power of the loan is formally the price for the use of a thing shared for some time, as when one rents out a horse. But the matter at hand concerns things whose use consists in their consumption. E. He who seeks to profit from a loan, or to receive something beyond the principal under strict justice, asks for a price for a use that does not exist. As St. Thomas Aquinas says in II, II, q. 78, art. 1, he is like a wine seller who wants to sell the wine and the use of the wine separately. Nor should you say that the consumption itself can be profitable. For a loan, in its nature, does not definitely contain either this kind of consumption or its general abundance, which might be priced. So, neither is this a reason for profiting by the power of the loan.

This is confirmed 1) By the authority of the Catholic school.

It is confirmed 2) By the views of those who are today most involved in financial matters and who admit that it does not contradict the notion that the interest could become non-existent.

375. B. FOR THE SECOND PART. Given a certain condition of the state, it is permissible for everyone to believe that money can be lent at a moderate interest rate.

Arg. 1. From the practice of the Church, as it appears in the responses of the Sacred Congregation, which we referred to earlier in historical notions. For the Church, more than once and through both the Sacred Penitentiary and the Sacred Office with the approval of the Holy Pontiff, when explicitly asked about its licitness, judged that all, both ecclesiastics and laymen, irrespective of any title and even in good faith concerning the obligation of justice, should not be troubled for lending at interest, provided they are prepared to follow the Church's commands. Now, since this formula,

as St. Alphonsus attests, signifies “not mere tolerance, but positive permission,” and most Catholic theologians, including C. d’Annibale, Pesch, Lehmkuhl, Ballerini-Palmieri, etc., interpret these responses as genuinely permissive; and since the matter concerns morals in which the Church, when questioned, does not hide, it is very clear that the style of the curia indicates at least a probable reason that in general today lending at interest is considered honest.

The fact that the Church has not issued a solemn definition on this matter is sufficiently explained by the absence of an apparent need for it, and its acceptability depends, as R. P. Lehmkuhl says, not on a quasi-natural condition of money but on its changeable extrinsic circumstances.

Arg. 2. From reason. Today’s state of affairs is such that not only movable goods but also immovable ones often change ownership, and money can be obtained for them. Trade and arts related to profitable operations have also grown greatly, and the practice of conducting them with borrowed money has increased, so that for those wishing to invest their money profitably, there are often multiple opportunities available. Although the undertakings sometimes fail, the general ease of acquiring productive assets or participating in inherently profitable ventures using money is undeniable. Moreover, the mere possession of money garners trust (credit), which is of utmost importance in the economic order.

Thus:

One who possesses something usually values it based on its utility, not only in its inherent form but also in the benefits it can bring when converted to something else. This can be applied even to fungible goods. Hence, no one doubts that the possession of money, the more it provides the means to purchase fertile lands or to engage in profitable trades, will be more valuable to a man who contemplates increasing his wealth or engaging in business. Therefore, in the fruitful use of a fungible good or its conversion into productive assets, there is inherent value worthy of estimation. However, as long as such opportunities are rare or infrequently used, this estimation is unique to a few and doesn’t affect the general value of things and can only be considered by those few who truly deprive themselves of such opportunity. Hence, the so-called extrinsic titles. But if such opportunities are almost continuously available and the knowledge and will to seize them become widespread, the possession of money will commonly be valued based on its economic utility. As evident from the previous thesis, common estimation creates a value that, adhering to the possession of money by anyone, can be transferred temporarily or permanently and can justly be compensated by an annual price or interest. Moreover, this form of price, set as an annual or monthly payment, aligns well with the nature of things. For the benefits commonly expected from possessing money are consistent with the gains usually obtained from productive assets or practiced trades at set intervals.

In brief, for a certain condition of the state to justly allow everyone to believe that money can be lent at a moderate interest, it’s sufficient that money is commonly valued based on the hope of fruitful consumption or the trust it garners. For then, from this hope, the possession of money derives a value, of which the lender is temporarily

deprived and rightfully demands compensation through interest. A. Such can be the condition of a state, as evident from today's facts. E.

This is confirmed by 1. St. Thomas in 1. 5 Ethics, lecture 9a, end: "It makes no difference whether five beds are given, or the amount that five beds are worth."

2. And more notably by LESSIO, who in his time, using this same argument, generally allowed merchants to charge interest. Referring to chapter 20, n. 123-127: "A price can be set... even for the burden of being without one's money for a certain period of time. Since money is an instrument of trade, and depriving oneself of one's trade instrument has a monetary value; why can't merchants set a certain price for the absence of money by mutual consent... Moreover, this price seems to be chargeable by any merchant, even if he reaps no profit from it. Firstly, because it is the just price for the absence of money among merchants;... secondly, when a thing or obligation, for valid reasons that are commonly present, has a price set, I can demand it, even if such obligation is not a burden to me, or even if it is beneficial, because it is commonly estimated as such." Similarly, C. de Lugo, d. 25, n. 18, allows even one who would not have cultivated the field to demand a price for the obligation of not cultivating it.

376. C. THIRD PART. The former severity of the Church and its present leniency are free from all blame. Three possible criticisms can be conceived: Error, Inconsistency, and Inopportune interference in business and arts.

There was no error, neither in commending charity nor in prohibiting usurious gain through a loan: this is evident from the first part. At most, it can be said that theologians perhaps noticed the changed economic circumstances a bit late and judged certain cases more strictly than necessary based on true principles but without accurately considering the facts. However, this private mistake, which had its positive outcomes, as we will see, cannot be attributed to the Church, especially since it was not long-lasting, and a certain degree of confusion can hardly be avoided in those times that involve some and not yet a perfect change in morals.

No inconsistency can be alleged, as the very nature of things demands a different solution to the question in different circumstances. This is clearly evident from the second part.

The third criticism is also easily refuted. For: a) The reason for the severity was the cruel oppression of the poor and afflicted. This is evidenced by the arguments of the decrees. Did the Church harm temporal prosperity when it saved countless people of the lowest order from utter ruin? Cf. Jannet does not hesitate to say that these laws were absolutely necessary for the well-being of the people, and without them, the emancipation of slaves and the freedom of peasants would not have occurred. Indeed, didn't we see, with reverence, St. Basil and St. Ambrose (referring to the previously mentioned locations) concerned about small inheritances and even human freedom itself?

b) The Church only forbade this one thing: that, outside of all society, outside of all purchase of property, someone, without work, without risk, should seek an increase in idle money simply from a loan.

When the Church did not in any way prevent someone from seeking profit through money in a true business transaction, by buying, as we would say today, stocks, it encouraged truly profitable businesses and prompted people's ingenuity to find other contracts that would provide a legitimate title to profit. From this arose various more useful forms of contracts in which labor and money would be combined in partnership. Hence, according to Claudio Jannet, contracts of exchange and insurance were largely devised. Therefore, Benedict XIV rightly and deservedly asserted in his Encyclical "Vix pervenit", Proposition IV: "There is no doubt that there are numerous lawful ways and means available in these contracts for preserving and expanding human commerce and profitable business for the public good." The Church, therefore, did not suppress the desire to profit; but it forced the owner of money to seek profit through combined effort and genuine business, which he would have gained without his own labor, often oppressing the needy, if it had been permissible to receive interest from a loan. Therefore, even if theologians erred in considering the facts and applied the true doctrine with excessive severity, this rather accidentally produced joyful results.

c) It is also beneficial to carefully observe the difference, in defending truth and justice, between ecclesiastical and secular power. The latter aims at a temporal end and external order and, to prevent more serious evils from arising, often has to tolerate certain sins. Therefore, followers of liberal schools might point out certain harmful civil sanctions enacted against usury, but this will not prove that it was not in the public interest for the notions of fairness and justice to be effectively promoted by the Church in its role of teaching all truth.

d) Given the immense hatred and dangers that the excessive desire for profit and wealth has spawned in current society, it is entirely misguided for these liberal economists to blame the Church for championing equity and justice, for protecting the downtrodden, and for curbing the "twin plagues of life, excessive materialism and insatiable thirst for pleasures." (Encyclical *Rerum novarum*.)

377. III. Difficulties.

A. AGAINST THE FIRST PART 1.

I. PROFIT THROUGH A LOAN IS PERMISSIBLE. For:

a) A loan entails a service rendered to another. A. No one is obligated to benefit another for free.

R. Either accept or refute the previous point. D. minor. No one is obliged i.e., one can rightfully withhold service, C.; i.e., if one wishes to provide it, they can demand a price, sub-distinction if it has a set value, C. otherwise, N.

Example. That service is a favor. A. A favor can naturally receive compensation. E. (C. d'Annibale, II, 533.)

R. C. or refute major. To minor. Distinguish. A favor can receive compensation out of gratitude, C. out of strict justice owed, sub-distinction if it is burdensome or provides something of value, C. otherwise, N. Also, distinguish consequence 2.

b) (Or a new example.) A. It's burdensome. Having money readily available is not without prior self-denial, where one abstained from spending it. A. This self-denial is a form of deprivation that justly receives its reward or compensation in interest. – So say many today, like Bastiat in Harm. VII. The Capital.

R. Deny major... without formal prior self-denial and made for the benefit of the debtor, I deny; without some material self-denial, often driven by one's own private goals, e.g., to become wealthy, I concede. Cdt. minor. This objection goes against common sense and is rightly ridiculed by socialists. See Pesch 1. c. p. 41, 42; Weiss 1. c. p. 673; Antoine 1. c. p. 503, n. 4. At most, it can be conceded that, through positive law, moderate interest could be permitted for the sake of the common good, to encourage thriftiness.

c) In a loan, the time by which the debtor can delay payment is always justly compensated. From that moment, the lent money becomes a present good for the borrower and a future one for the lender. A. A present good is more valuable than a future one. E. So says Böhm von Bawerk, Kapital und Kapitalzins, vol. 2, p. 300.

R. I deny the assertion and the argument. I divide the major. It becomes present for the borrower, C. future for the lender, distinguish; always uncertain or with a loss or missed profit, sub-distinction; always, N. sometimes, C. – To minor. A present good is more valuable because it's more certain, or it's acquired without expenses, and in the meantime, one is deprived of its utility, C. otherwise, I deny 1.

We are speaking of things considered in themselves, and in any societal condition. Moreover, if over time it becomes a future good, at the moment of payment, the money becomes a present good again.

d) The sterility of money must be denied. For money is no more sterile than a knife or land, which, without human effort, provide neither utility nor profit. However, with human ingenuity, as for example in business, money is said to be and is fruitful. Cfr. Tüb. Quart. 1879, P. 25.

R. The comparison is denied.

For the primary use of a knife or land, and its objective, preserves its substance to the user, and brings either utility or profit; whereas money in itself perishes for the user, and its consumption is not inherently (always) profitable. In specific cases, it must be considered, according to the previous thesis, whether the utility is inherent to the one

giving up the use, or the user. However, we assume that there is no partnership contract. Cfr. points to be made in the following thesis.

e) A loan contains an obligation not to demand repayment before a certain time. A. This is always valuable. E. This is proven by the similarity to the obligation of giving a loan, which is estimable in price. Otherwise, a stipulation where the lender obliges the borrower to later return the favor with another loan could not have been condemned as usurious. See Ball. III, p. 615, n. 255 and p. 650 n. 323. R. I deny the major premise and the proof of similarity. For, besides the fact that the obligation to make a loan, due to less defined conditions of that future loan, more easily becomes inherently burdensome, it imposes a loss of freedom, which one was not obligated to. However, the obligation not to demand repayment before a certain time is not a direct personal bond: it is merely the observation of a granted real right. A. It is accepted that a price cannot be demanded to fulfill an obligation already taken on out of justice, or to observe another's right. For example, it would be inappropriate for a donor to demand a price for the obligation never to reclaim a donated item. Similarly, one who speaks is already obligated by justice to not harmfully lie: one can be bound by a burdensome pact to speak, but not to refrain from uttering harmful words. Likewise, the action of showing the way is not estimable in price; but what prevents someone from obligating themselves for a price to provide this service? And, as Mol. d. 304 notes, you can obligate yourself for a price to sell; but in the sale itself, beyond the price of the item, you cannot demand something due to the necessity of henceforth lacking that item. Therefore, the obligation not to demand the repayment of loaned money is not formally an obligation estimable in price; but only from another perspective, as explained in the proof. If you argue that the deprivation of money inherently involves some inconvenience, this is sufficiently compensated by greater security than the creditor obtains. For we assume the restitution of money is certain. Cfr. the proof itself. This difficulty is extensively discussed by C. de Lugo. d. 25, s. 3, and we do not approve of his answer in n. 24; we prefer n. 25.

2. USURY CANNOT BE SINNED UNLESS THERE IS ABUSE OF ANOTHER'S NECESSITY. For those who ask for a loan without being compelled by any necessity, since "knowing and willing" they are not wronged. Tüb. Quart. 1869, p. 409-411.

R. I deny the assertion and the reason.

Just as with necessity, someone can be driven by passion, subjective desire, to make a loan, and therefore equally unwilling to pay illicit or excessive interest. Cfr. S. Th. De Malo, q. 13, art. 5; Mol. d. 304, n. 11 and Zech. Dissert. 1, n. 154. Furthermore, abusing another's necessity can sometimes be contrary to charity, such as if, while needing to help a needy poor person, you do not provide money except under interest that is moderate in itself.

B. AGAINST THE SECOND PART.

1. FROM THE INHERENT STERILITY OF MONEY, socialists argue against the modern legitimacy of usury.

R. Money is sterile in itself, but not always in its equivalent or as a tool for business. What they again deny will be demonstrated in the following.

2. FOR EXPLANATION BY FRUITFUL CONSUMPTION. As soon as there is fruitful consumption on the part of the borrower, interest can be demanded. For they concede that money is not sterile at that point. Therefore, there is a quasi-renting of money. Tüb. Quart. 1875, p. 220.

R. I deny the antecedent. For although the money is not sterile to the borrower, it does not follow that it is fruitful to the lender or in itself. Otherwise, you would say that if the creditor himself had a part in the business, through a contract, and provided the money, so that, as a business partner, he is deemed to have usefully spent his own money. Cfr. Molinam, d. 304, n. 12.

ARTICLE III. Supplements to the Doctrine

I. COROLLARIES.

378. The Current Attitude Toward Usury. With our explanation validated, we can sincerely admit that it seems to be in accordance with the truth that many of those who lend money today do not wish to engage in business or buy an income stream, but simply have the desire to invest in credit and from this contract obtain profit. Cfr. Pesch, 1. c. p. 46-48.

This is permitted for them, because money today inherently has a “capital” aspect according to common estimation, whose even temporary concession holds value.

379. Loan is the Proper Place for the Sin of Usury. From the thesis, it follows that the sin of usury violates the proper equality of the loan contract, which therefore will be the proper place for that sin. However, a loan is understood as both formal and virtual, by which a different agreement is often mixed, for example, a sale with deferred price payment (sale on credit).

And so, it has always been understood that usury was associated with the credit of fungible goods, as is easily evident to anyone reading the Holy Fathers and antiquity. We do not know by what right the esteemed Professor Funk invents this as a medieval discovery. The location of usury in a loan was then unanimously testified by jurists and theologians; and finally, it was solemnly declared by Benedict XIV in the Encyclical *Vix pervenit*. Cfr. above, n. 360, p. 458.

380. The Taxation of Usury is often said to be made by comparing the probable profit and probable loss that would commonly occur to the user of money in such a place and at such a time. However, this consideration is inadequate, as it neglects this not insignificant utility of possessed money, which establishes trust (gives credit). Therefore, we prefer to say that just usury in itself clings a little below the common hope of profits from possessed money. We set the interest a little below the hope itself, because the use of money for business is subject to various risks, so that the provision of security promised by the borrower (insurance premium) must be taken into account.

Furthermore, usury, as commonly estimated, cannot be increased unless due to an extraordinary external title. Common conditions are already calculated in the usual price, as we said above, n. 343, 366.

II. SCHOLIA.

381. Under the term “modern usury,” some understand all the unjust ways of making profit prevalent in today’s business world. This is permitted by us; however, when they believe that these frauds and wrongdoings are denounced by the words of the Encyclical *Rerum Novarum* (at the beginning): “The evil of usury has increased, which, although repeatedly condemned by the Church, is still practiced by greedy and profit-seeking people under a different guise,” we believe they are mistaken. It would be surprising for the Holy Father to attribute an unusual meaning to a word whose meaning has been defined in so many ecclesiastical documents. Furthermore, usury, as condemned by the Church, is said to have its proper place in loans; the new guise is easily understood as some new disguised form of usury, which is not infrequently practiced when, under the pretext of aiding payment, buyers of certain goods agree to installment payments that, when added together, exceed the value of the goods (payments by installments). Many other examples could be given.
382. The sin opposite to usury, that is, the undue denial of loans, is not so rarely committed today by the wealthy when they delay payment beyond what is morally acceptable to small merchants, causing them numerous inconveniences and losses, which they do not even think to partially compensate with a moderate interest. Saint Antoninus already condemned this unjust delay in his *Summa*, p. 2, t. 1, c. 17, §7.
383. We can list several theologians or economists as supporters of our opinion, such as RR.PP. Lehmkuhl, Pesch, Antoine, from the Society of Jesus, whose explanations are very similar to ours. However, we believe, contrary to what R. P. Lehmkuhl thinks, that someone who lends money today still truly makes a loan. This is because a loan is made when something fungible, such as money, is granted, not necessarily a sterile thing. However, this does not mean we permit interest on the loan itself, as we argue based on the common estimation, which relies on a reason not contained in every loan but is extrinsic, based on current circumstances. Similarly, when we deny that the lender assumes a strictly defined obligation, we are less inclined to approve the formal explanation by R. P. Pesch, who says interest is the price of this obligation, and that a loan is a bilateral agreement; although we agree that the lack of money is today considered to have a price.
384. From what time has it universally been permissible to charge interest on loans? As is often the case in such matters, it is difficult to pinpoint the exact time when changes in circumstances made it objectively valuable to lend money. Certainly, in the Middle Ages, when ecclesiastical laws were promulgated, such conditions did not yet exist. Even Benedict XIV did not acknowledge their existence, although perhaps they might have been present in some cities, but

not in rural areas at that time. In our century, however, after all restraints on unrestrained greed were loosened and the abundance of goods led to a great uniformity in living conditions everywhere, we quickly reached this state, which is not entirely satisfactory. Refer to Pesch, p. 71 in the note.

385. On Annuities and the Triple Contract. Once the rationale of why interest is not permissible in loans is clearly understood, it becomes quite evident that usury is not committed by one who, with the help of money, acquires the right to receive a portion of the fruits from a productive property, or who, through a contract, combines money with commerce. And for this reason, many theologians defended the purchase of annuities and the triple contract. Let's discuss these briefly.

1. An annuity refers to an annual income derived from a productive property. Productivity can come from nature or human labor. Hence, there are real annuities, which pertain to a specific productive property of another, such as a field or meadow; and personal annuities, which pertain to the labor of another, indefinitely. The one who buys the right to obtain a certain profit or price annually from the property or labor of another is called an annuitant, while the one who must make the payment is called the annuity payer. This right can be acquired either by paying a certain sum of money or by transferring the ownership of the field, meadow, or productive property, while reserving the right to a share of the fruits for the transferor. Therefore, the latter is called a reserved annuity, while the former is a designated annuity, in which the productive property is merely designated as being subject to this quasi-servitude.

An annuity is redeemable on one side or both, if, at the will of either party, the obligation for annual payments ends with a single payment of a significantly larger sum. Otherwise, it is irredeemable.

A real annuity contract has been formally approved by Pope Martin V and by Pope Callixtus III in the papal bull "Regimini Universalis Ecclesiae." As for the personal annuity, especially the redeemable kind, there was more doubt, and indeed, due to the risk of abuses, it was prohibited by the constitution "Cum Onus" of Pope Pius V; this prohibition applied only in Italy.

It is undeniable that this contract can easily be tainted with usurious intent, or in fact, if an excessive annuity is to be paid, it can lead to the charging of interest. However, the contract itself is free from this stain, provided that: a) The annuity is truly based on a productive property. Therefore, Sporer asserts as "absolutely certain among all" that a person's industry and profit-making ability are required; b) The annual sum is moderate; and, if the buyer takes no risk or can resolve the contract, a just proportion is deducted for these reasons.

Sporer excellently proves this legality in his Tract. VI, In Decal. c. 6, n. 16-24.

2. The Triple Contract. This was a partnership contract in which, for a certain potentially profitable business venture, one party would contribute labor and the other money. The latter would then avoid

the double risk inherent in the former contract through dual assurances. For the uncertain profit, a smaller but certain profit was promised to them; and the risk of the principal was, with a reduction in profit, shifted back to the other contracting party. Authors debated whether it was permissible to enter into this triple or trine contract with one and the same person; and, due to the high risk of abuse, this type of agreement was condemned by Pope Sixtus V in the constitution "Detestabilis avaritiae," 1586. However, in itself, as long as the fixed profit is demanded according to a just standard, it seems to contain nothing that contradicts natural law.

With these and similar contracts, one could once use money profitably and justly. And do not think that this falls into the realm of pointless subtleties. For these contracts could not be made unless there were productive assets or a profitable business readily available; and someone who either wanted to cede their right to receive the fruits of their field or industry, or wanted to admit a partner into their business.

Therefore, those who believe that theologians were almost forced to excuse contracts that inherently contradicted their own severity, and who think that earning profit from loans is inherently dishonest, are mistaken and have not sufficiently understood the true reason why earning profit in this way is dishonest.

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Merkelbach – Summa Theologiae Moralis, II De Virtutibus Moralibus – chatGPT Translation

Posted on [October 30, 2023](#)

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574. A loan 1 (consumer loan, simple loan; consumer loan, loan for consumption or in consumables) is the temporary concession of a fungible thing or for primary use.
575. There is vast literature on the loan and usury among theologians, philosophers, lawyers, and economists; among Catholics, Protestants, Jansenists, rationalists, socialists, etc. We only indicate some specific writings that may be more useful to priests: Alb. Weiss, Social Question and Social Order; Pesch, Basic Interest and Interest Limit; A. Vermeersch, in Questions of Justice; E. Van Roey, On the just interest from a credit contract; A. Rijcken, The Teaching and Practice of the Church concerning loan interest; J. DeWit, The prohibition of interest in medieval economics.

(a. 1892); Therefore, three things are required for its essence:

1. a fungible thing, primarily consumable, which someone cannot use without abusing it either naturally, i.e., by destroying it, e.g., food and drink, or morally, i.e., by transferring it, e.g., money which, if you spend it, is lost to you;
2. delivery of that thing: for it is a real contract;
3. the obligation to return it in the same species, quality, and quantity after some time.

Hence, a loan differs: 1° from a loan for use, a lease, and a deposit: a) because in a loan the thing must be fungible, but not in the others; b) because the thing does not need to be returned in its original form; c) because in a loan the ownership of the thing is transferred, but not in the others; and therefore d) in a loan, the thing is lost to the recipient, but in the others, it's lost to the one giving it (a. 1893);

2° from a donation in which the thing is given to another without any obligation to return it;

3° from a sale and an exchange in which the thing is not returned in the same form but in another;

4° from an exchange in which one currency for another different one, e.g., gold for silver, is immediately given.

575. Obligations arising from a loan are:

A. for the lender: 1° to deliver a good and intact thing; if the thing has a harmful defect, he must disclose it, otherwise, if he knows of it, he is liable for damages, e.g., if he delivers wine that soon turns sour;

2° not to reclaim the thing before the stipulated time or as determined by prudent judgment;

3° by himself, and excluding special circumstances, not to demand more than the lent thing was worth (a. 1898-1901).

B. for the borrower: 1° to return the thing borrowed in the same form, quality, and quantity, whether its value has increased or decreased, and therefore for money, it is sufficient to give back the same numerical amount (a. 1895);

2° if it's impossible to return in the same form, he must repay the value at the time and place where the thing is to be returned;

3° if he does not return the thing or its value at the due time, he is obliged to pay the legal interest rate from the day of the summons or legal claim (a. 1895-97; 1902-04).

This is a translation that captures the general meaning of the provided text. Some nuances, especially those related to legal or theological contexts, might vary, so consulting a specialized translator for a precise translation is advisable.

576. Usury (interest), derived from "use", generally refers to the use of anything good or bad. However, in moral science and law, it is taken negatively to mean the price of the use of something that has no use other than its consumption. Therefore, its use has no value distinct from the thing itself. It is, thus, the price of using a borrowed thing or profit from a loan as an obligation due to the loan. It is described as:

1° profit, i.e., something of value beyond the principal, whether it's money or anything else, e.g., gifts, burdens, protection, civil obligation to do something, such as frequenting a workshop, not raising a building, not opening a window, making recommendations, abandoning a rightful legal action – but not abandoning an unjust one;

2° from a loan, because if it's from another contract, it's not injustice or not usury;

3° as an obligation due to the loan (only for the loan), because if the profit in the loan doesn't arise directly from the nature and reason of the loan or from an intrinsic title, but because of the loan due to an added extrinsic title (e.g., loss of profit or emerging damage), it's not usury; and similarly, if it isn't perceived as an obligation, but entirely voluntarily, out of pure gratitude, without any obligation.

Sometimes, however, the term usury is used in a more general sense and signifies any additional amount beyond the principal to be paid by the borrower, thus encompassing all interest. Then it is distinguished into lucrative usury which seeks profit from the nature of the loan, compensatory which is given to compensate for damage, and punitive which is a penalty for negligence in payment.

Today, since generally moderate interest is allowed for extrinsic reasons, interest (*foenus*; interest) is usually distinguished from usury (*usura*; usury). Interest is said in the manner of the Greeks to whom *τόκος* (*tokos*), birth, means that by use money produces its fruits; but now interest is taken positively for lawful additional payment, while usury is now understood as exaggerated or unjust interest: what is taken beyond what the extrinsic title allows seems to be taken by the very nature of the loan.

It is indeed questioned whether: just as in lending something a profit can be perceived for its use, in which case it is no longer a loan but a lease, similarly in lending something a profit can be perceived, not occasionally and accidentally, but essentially, always, and by the intrinsic title, from the very nature of the loan. Regarding this, there are three following assertions.

577. Principle I. Any interest beyond the principal or even the smallest usury received by the very nature of the loan is inherently prohibited by natural law and is unjust.

Proof 1) general argument: By natural law itself, it's against justice to sell the same thing twice, or to sell what doesn't exist or what isn't one's own: for this evidently establishes an inequality that is contrary to justice. However, the usurer does one of these. Therefore. — Proof of the minor premise: Either he takes profit for the very thing lent, and then he sells the same thing twice, or he takes double payment for the same thing, namely the returned item and the additional charge. — Or he takes profit for the use of the lent thing, and then he sells what doesn't exist, because if we're talking about things consumed by their very use, the use isn't calculated separately from the thing, because it is the very consumption of the thing; or he sells what isn't his, because he sells the use of a thing that isn't his, as the full ownership both in use and in title has been transferred to the borrower. Therefore, he always commits injustice if not only an equal thing is returned but also interest is added since more is returned than what was given.

“If someone,” says St. Thomas, “wanted to separately sell wine and the use of wine, he would be selling the same thing twice, or he would be selling what doesn’t exist. Hence, he would manifestly sin through injustice. And for a similar reason, he commits injustice, who lends wine or wheat, asking to give him two compensations, one concerning the return of an equal thing, and the other, the price of use which is called usury.”

2. specific argument for money: Money, as money, is nothing but a measure of the utility of other things, which are compared to each other according to value, and therefore its proper and principal use for which it was made is entirely in the exchange by which it is consumed and lost to the one who exchanges it with something (it is nothing but an instrument of exchange). Hence, money is by nature sterile and unproductive and has no utility other than representing all things, no benefit or utility distinct from its consumption. Therefore, by its nature, it is a thing consumed at first use, and therefore the use of money as such is not distinguished from the money itself; hence, the use of money cannot justly be sold or leased separately.
1. Emerging damage or positive loss that the creditor suffers in already acquired goods, e.g., if due to a lack of money or wheat, which is given as a loan, he is forced to sell goods or income at a lower price, or he cannot repair a collapsing house, or has to buy something at a higher price later, e.g., wheat.
2. Foregone profit, or the loss of price that the lender would have gained if he had used the thing in another contract or business, i.e., profit legitimately and probably expected, which the creditor deprives himself of by lending his money to another. Like the impossibility of conducting a fruitful business which he would probably have done otherwise. This can be included in the agreement in two ways: a) conditionally only, i.e., if he later finds out that profit was made elsewhere, and then the whole should be compensated; b) absolutely, i.e., if from the beginning there is hope of profit, which can also be compensated, but less than the profit itself.
3. Special and extraordinary risk of the principal, i.e., the serious risk of not recovering the principal or only with difficulty, with labor and expenses; distinguished, that is, from the common risk that is also incurred by the owner. This is estimable in price and is equally compensated if the interest is proportioned to the risk, so that it is greater the more the risk looms.
4. Conventional penalty, i.e., a clause by which the borrower obliges himself to pay some additional amount as a penalty if he has not returned the principal by the predetermined time, as is fair, provided the additional amount is proportional to the delay and the delay is blameworthy; for which legal fault is sufficient.
5. The title of civil law, when the law allows moderate interest to be received to promote trade and the common good. However, this doesn’t seem to be a title that is distinct in itself but is rather based on the presumption of the first three.

Principle III. In today's economic conditions in which external titles are ordinarily present, it is always permissible to receive moderate additional payment, even if in a particular case the aforementioned titles are not demonstrated.

Indeed, the fluctuation and exchange of goods, even of fruit-bearing ones, in our time has become very easy and continuous; industries, businesses, and industrial companies are almost countless, so that anyone who wishes can always participate in profitable ventures with a probable hope of profit. Hence, if money is lent, there also arises the title of foregone profit. Considering this state of affairs, our Law, after speaking of a purely gratuitous loan, also allows the stipulation of interest to be added to the loan contract, and indeed generally (whether for money or other goods) and without restriction, because it presumes these conditions to always be verified (a. 1905-1908).

Thus, the loan contract, inherently gratuitous, has now incidentally, for special reasons commonly occurring, become burdensome in our times. Therefore, the Church, having for several centuries condemned all usury, as evident from condemned propositions 42 of Alexander VII, and 41-42 of Innocent XI, and from the encyclical of Benedict XIV, from the 19th century has already responded that "confessors and penitents who conform to civil law or common practice in the matter of loans should not be disturbed." This was also authentically published by the Code of Canon Law, because there's a presumption that civil law is just (can. 1543). This practice will be licit as long as the economic conditions remain the same; something the recent war has shown to be unnecessary.

The entire doctrine, both in terms of principles and practical solution, is briefly proposed by the Code, in the said canon 1543: "If a fungible thing is given to someone in such a way that it becomes theirs and later an equal amount of the same kind is returned, no profit can be received due to the contract itself (1st principle); but in the provision of a fungible thing, it is not inherently illicit to agree on legal profit, unless it is known to be excessive (3rd principle), or even on greater profit, if a just and proportionate title supports it (2nd principle)."

580. Observations — Although the Scholastics regard profit from lent money or from the proper and principal use of lent money as usurious, they do not, however, consider all profit made from money as illegitimate.

Indeed, some profit can be obtained from money:

a) If someone were to lend marked money for display or as a form of collateral, such use of money can be lawfully sold according to St. Thomas Aquinas, q. 78, a. 1, ad 6. For then the money is not intended for consumption but for another use, from which profit is legitimately obtained. This is a secondary and specific use of money, and in this regard, money is not merely consumable at first use.

b) Money shares a common use with other things when viewed not formally as money, but materially as a thing, due to the material it's made from, its shape, its utility, its distinction, etc. Thus, it is considered, not according to its legal and standard value, but according to its natural and real value, which differs from the former and varies in

different regions. Thus, money, like any other thing, can be a commodity that can be sold or exchanged, especially when compared with other money, as done in a currency exchange contract, which St. Thomas calls: "a form of exchange of money for money" (q. 77, a. 4).

c) "He who entrusts his money to a merchant or artisan in the manner of a partnership does not transfer ownership of his money to him but retains it, so that the merchant trades with it or the artisan works with it at his own risk. Therefore, he can rightfully claim a share of the profit as it pertains to his property," says St. Thomas, q. 78, a. 2, ad 5. Hence, one who enters into a partnership with a merchant or craftsman, providing money for them to trade or work with, can rightfully obtain some profit, as he retains ownership of the money and bears the risk of the principal.

d) Moreover, over time, it was permitted to obtain moderate profit from established charitable lending institutions and from the censuses in money handed over as redeemable assets, which led to a change in the discipline regarding usury.

e) Charitable lending institutions are public treasuries where money and other fungible items were collected. They were lent to the poor, to protect them against usurers, through collateral, with the administrators taking on the risk, and a moderate additional charge for expenses necessary for the wages of the administrators and the operation of the house. Indeed, Pope Leo X, in the Fifth Lateran Council (1515), solemnly declared these institutions as lawful and meritorious "in which something moderate is taken, only for their expenses and indemnity, solely for the wages of the administrators and other things necessary for their preservation, as mentioned, for their indemnity only, beyond the principal, without profit to the same institutions." Therefore, not by the nature of the loan, but due to the labor which deserves a wage; not for profit but to compensate for labor and other expenses; perhaps even to more easily collect the necessary money, but this last point was not affirmed as legitimate in the said Council.

From the approval of Pope Leo X, it came to pass that wealthy merchants, especially the Lombards, obtained permission from princes to earn a moderate profit from loans, as was done in the Charitable Lending Institutions (Montes Pietatis), thus providing for the needs of the poor.

b) Around the same time, the censual contract became more common, through which a right was acquired to receive an annual pension, not only from the alienated fruitful property but also from money given to another. This contract essentially differs from a loan because the money is given to another in perpetuity on the condition that an annual census payment is made. However, once it was stipulated that the census could be redeemed, in practice it was not much different from a burdensome loan. Therefore, it was prohibited by Pope Pius V in 1569 by positive law, but it was not declared intrinsically unjust against natural law; hence, the prohibition did not last, and the redeemable census was considered legitimate by many theologians, but under certain conditions, as noted in n. 565.

c) The triple contract was also recognized as probably lawful, which, as the name suggests, is a combined triple contract: of partnership, assurance of the principal, and

assurance of profit. For example: Peter and Andrew enter into a business partnership, in which Peter contributes 10,000 francs and Andrew his services, from which Peter expects to profit 2,000 francs: behold the first contract, that of partnership. However, Peter, not wanting to risk the principal, offers Andrew 500 francs to secure it: behold the second contract, that of assurance of the principal. Since a certain profit is preferred less than a larger uncertain one, he later sells his hope of gaining 2,000 francs to Andrew for 1,000 francs: behold the third contract, that of assurance of profit. Thus, at the end of the transaction, Peter will receive 500 francs. By this method, he effectively receives an interest of 5% on his money.

Now, this contract, consisting of three non-unjust contracts, is lawful in itself, but not always, only when the expected profit is truly probable. Then, the interest is no longer usury, because there is a foregone profit, hence a just extrinsic title.

581. Corollaries. — To explain the apparent contradiction between the ancient doctrine of the Church, which rigorously condemned all usury, and the more recent practice or tolerance of moderate interest, some have taken a different approach than ours, though not necessarily a more successful one.

Some have distinguished between a consumption loan and a business loan, based on whether the borrowed money is intended for purchasing food and drink or for conducting business; the former they said should be interest-free, while the latter could bear interest.

However, Pope Benedict XIV condemned usury in both cases. Moreover, the extrinsic purpose to which a contract is directed does not change its nature, for money, insofar as it serves for exchange, is always given to another to be consumed at their discretion.

2. Others have said that two contracts can be made concerning money, just as with non-consumable goods: one interest-free, a loan; and the other bearing interest, a lease of money, in which a fee is given for the use of the money, which the owner grants and from which he abstains for a specified period, while still retaining the value of the money. Indeed, the current use of money is more valuable than its future use. — But:

a) In goods consumed upon first use, the use of the item is not distinct from the item itself (since we can only use it once), and therefore it cannot be valued in terms of price or leased; hence, the lack of non-productive money, if it is without external detriment, is not more valuable than the item itself and therefore cannot be separately priced; — b) Both use and ownership are granted and similarly returned, ensuring fairness (as per St. Thomas Aquinas, q. 78, a. 1, ad 5; a. 2, ad 2 and 4); — c) inherently, present money is not more valuable than future money, unless there is a probable hope of profit currently; otherwise, a small inconvenience arising from the deprivation of using money is compensated by greater security since the risk lies with the borrower; — d) the value is not retained but is given to the borrower: for what purpose would money serve the borrower without value? Thus, the lender has only a right to the item; — e) this opinion is contrary to the encyclical of Pope Benedict XIV.

3. Some consider money to be virtually fruitful and an instrument of trade or production, especially in the current economic conditions. Therefore, one who lends money provides a benefit that can be valued and compensated for.

Response: Money is not fruitful in itself due to inherent fertility. It is said to be fruitful only improperly and indirectly, insofar as someone, with the aid of money, buys goods from whose sale or transformation a profit is made. Hence, money is not a real instrument of trade or production, but, as it is spent and exchanged, it serves trade and production and thus is a means of acquiring real instruments. Namely, money is not the cause in the production of wealth, but only a condition. The productive benefit that arises for the borrower is not from the money itself, but from their labor and industry, and therefore it should not be sold to them; another benefit, by which it is a means of acquiring fruitful things, is returned by repaying the money.

If they only called money virtually fruitful because, under current circumstances, one can almost always enter a profitable partnership or establish a trade to make a profit, they would be right. The manner of speaking might not be precise, but they would really only be affirming what we have said: that only an external title of missed profit is always present.

4. Finally, some resort to civil law as a title inherently sufficient because the law, by virtue of supreme authority, intends to transfer ownership in the same way as in prescription, and thus encourages citizens to lend easily for the benefit of trade.

But a) this view seems to overly extend the supreme domain of the State, for it can be seriously doubted whether the State has such power and can demand such a thing for the common good, except in economic conditions that already make usury legitimate.

b) The intention of the legislator is not clear that he wanted to do this, especially in regions where civil law sets a premium only for certain cases and leaves complete freedom for most. Thus, in our case. However, our civil law assumes that a loan is a free contract and only allows interest to be established (a. 1905).

582. Evolution of moral doctrine on loans and usury.

Given that the question of the morality of loans and usury, especially considering specific circumstances, is quite intricate, it's not surprising if Catholic doctrine on this matter has not always been known with the same certainty and clarity at all times.

A. In Sacred Scripture:

1. Among the Hebrews, usury was strictly prohibited towards fellow citizens (Ex. XXII, 25; Lev. XXV, 35-37, Deut. XXIII, 19-20; XV, 7-10). This law was not always strictly observed, so the Prophets often had to condemn usury and praised those who did not lend their money at usury (Ps. XIV, 5; LXXI, 14; Ez. XVIII, 5-20; Neh. V, 7, 9). However, usury was tolerated concerning foreigners (Deut. XXIII, 19-20). From this, it doesn't follow that usury was prohibited by positive law only towards brothers: it can be said that concerning foreigners, the law merely stated tolerance, not positive legality.

2. In the New Law, Christ, explaining the commandment of love, demands free loans without distinguishing between Jews and foreigners: "Love your enemies; do good, and lend, hoping for nothing in return; and your reward will be great" (Lk. VI, 35). And he encourages giving loans easily: "Give to him who asks of you, and from him who wants to borrow from you, do not turn away" (Mt. V, 42). However, from these, it cannot be strictly inferred that usury is also prohibited by justice; just as from the parable of the talents, it cannot be deduced to be allowed, where the Lord addresses the lazy servant who had hidden the received talent: "Then you should have put my money on deposit with the bankers, so that when I returned, I would have received it back with interest" (Mt. XXV, 27). Christ simply explains what was customary at his time, without intending to approve or disapprove of the manner of acting, because it was irrelevant to the purpose of the parable, which was to show that only those who have fruitfully used the talents received from God are to be rewarded.

B. Among the nations, notably the Greeks and Romans, excessive usury was prevalent. This was often prohibited by laws, as with Solon. However, laws allowed moderate interest, for example, ten or twelve percent. Later, under the rule of Christian emperors, six percent prevailed. Major philosophers, however, condemned all usury as being against nature: Plato saw it as contrary to the equality of citizens (in "Laws" V, 742); Aristotle because money is inherently sterile ("Politics" I, c. 3, n. 23). They were followed by Cicero ("On Duties" II, at the end) and Seneca ("On Benefits" VII, 10).

C. At the beginning of the Church, Christian moral knowledge was not yet fully formed. They focused not on all aspects, but mainly on foundational principles and significant issues. Moreover, the Church did not have an influence on the public and social life of the Empire. Hence, it is not surprising if the doctrine on the injustice of usury was not explicitly proposed, and even more so, if laws according to it were not changed. We even find that Christians borrowed money from usurers, as attested by Basil, Chrysostom, and Jerome.

1. In early times, the Fathers emphasized the commandment of charity regarding free loans: for instance, Clement of Alexandria ("Stromata" II, 18), Cyprian ("On the Lapsed," 6), and Tertullian ("Against Marcion" IV, 17). Later, in the 4th and 5th centuries, not only did they vehemently act against usurers, like Basil (P. G. XXIX, 263-280), but they also called usury unjust because it's unjust to grow rich at the expense of one's neighbor: for instance, Chrysostom (Homilies on Matthew, 56) and Pope Leo the Great (Sermon 17, alt. 16); or because money is barren: so thought Gregory of Nyssa (P. G. XLVI, 443-452), Ambrose ("On Tobias," P. L. XIV, 762-794), and Augustine (Commentary on Psalm XXXVI, P. L. XXXVI, 386).
2. Hence, in the Councils, there was a growing tendency to condemn and prohibit all usury, to the extent that they even demanded civil legislators to change laws that allowed moderate usury.

First and foremost, they strictly forbade clerics from receiving usury: as seen in the Apostolic Canons in the 4th century, Canon 44. Later, the prohibition was sometimes extended to the laity, such as in the Council of Elvira (A.D. 305) and the Fifth Council of Carthage (around A.D. 419).

However, given the existing legislation of the Empire, ecumenical councils prohibited usury only for clerics: like the First Council of Nicaea (A.D. 325), at a time when Emperor Constantine had previously allowed a twelve percent interest, which was later confirmed by Theodosius (A.D. 506) and was adopted by the Western Goths in Spain (A.D. 693). Those who praise the act of forgiving usuries that can be legally demanded, or remitting legal or lawful usuries, are alluding to this fact: such as Sidonius Apollinaris (Letter 24) in the 5th century, Pope Gregory the Great (Letter 38), and Gregory of Tours (History of the Franks, III, 4) in the 6th century.

Nevertheless, over time, the prohibition of usury became common even for the laity: such as the Council of Aachen (A.D. 787), Paris (A.D. 829), and Meaux (A.D. 845). This was so much so that sometimes the restitution of usuries was required; and civil law during the time of Charlemagne adopted this same prohibition for everyone.

From the time of Gratian (circa 1150), usury was universally prohibited in the Church. In his Decretum (Part II, Chapter 14), he included the statements of the Fathers and canons that generally condemn usury. Gregory IX later promulgated the title on Usuries (Book V, Title 18) in his Decretals, where suspension was decreed against clerical usurers, and excommunication against the laity.

At the same time, the doctrine of St. Thomas Aquinas on the essential gratuitousness of loans and the injustice of all usury became almost universally accepted among the Scholastics. The arguments on which he relies were already proposed by William of Auxerre and St. Raymond of Peñafort.

However, during the Middle Ages, when massive usury often prevailed, Councils and Popes more strictly enforced the prohibition, and indeed against any form of usury: such as the Third Lateran Council (A.D. 1179), the Second Council of Lyon (A.D. 1274), the Council of Vienne (A.D. 1311), the Fifth Lateran Council (A.D. 1550), and Pope Sixtus V (A.D. 1586).

E. In modern times, due to the resurgence of pagan culture, the introduction of free examination by Protestants, and changes in economic affairs, many tried to weaken the rigor of Catholic doctrine. Protestants, like Calvin and Molyneux, taught the lawfulness of usury, unless it is exercised on the poor or is excessive; Grotius argued that moderate usury is permitted by natural law but prohibited by divine law; Pufendorf, on the other hand, believed it to be lawful even by divine right; finally, Salmasius argued that money can be lent and its use can be sold because human industry makes it fruitful. Many jurists and economists declared it essential for commercial affairs and legitimate for the public good. Indeed, not only economists, but some theologians also began to explore new forms of contracts in which a profit from money could be justly received.

Nevertheless, the Catholic Church maintained the accepted Scholastic doctrine, and Pope Benedict XIV reaffirmed and proposed it again in his encyclical *Vix pervenit* (A.D. 1745).

Although in practice there was a subsequent relaxation of discipline, this is attributed to greatly changed economic conditions and the increased presence of external factors, as previously explained. However, the traditional doctrine was faithfully retained, as recently evidenced by the Code of Canon Law, which very precisely articulated and proclaimed it again in Canon 1543.

583. Practical Conclusions. — A. Just as in Christ's time (Mt. V, 42), so today, charity may demand that we assist a neighbor in severe need with a free loan, especially when they cannot pay interest, and we can do so without significant inconvenience. Typically, wealthy individuals are not obligated to lend large sums to the poor due to the risk of losing their principal. Often, it's sufficient for them to give a small amount to those in need, even if they ask for a loan. Outside of these situations, it's permissible to take moderate interest on a loan. In fact, compounding interest, where interest owed but not yet paid produces new interest (capitalization of interests), isn't inherently forbidden unless prohibited by law. Interest is considered moderate if it's proportional to the risk of the principal, opportunity cost, potential loss, and other local and temporal factors, as judged by prudent and upright individuals.

B. Regarding the legal interest rate, we note: 1° In regions where civil law sets a maximum loan interest rate, such a rate binds the conscience, and those who exceed it must make restitution unless excused for extraordinary reasons. In our country, parties are granted the ability to set their interest rate. Usurious crimes are only punished when usurers habitually charge interest above the legal rate and exploit the borrower's vulnerabilities (C. Poen., a. 494). Thus, our legal interest rate (4% for civil matters, 5.5% for business transactions as per the decree of Nov. 18, 1935, and 6% for unpaid direct taxes reduced to 4% by the decree of Aug. 22, 1934) is not universally prescribed but indicates what should be paid when the law mandates some interest when none was agreed upon. For one's conscience, this can be viewed as a safe standard.

2° It's not permissible to raise interest because the borrower is in greater need or because they might make more profit from the borrowed money; these factors don't contribute to the fairness of the transaction.

3° Under ordinary circumstances, one can charge the interest rate commonly practiced in a particular place and time, even if one would otherwise have kept their money idle. Within these limits, there's always the justification of lost potential profit.

4° In extraordinary circumstances, the said rate can be slightly increased due to special reasons, like significant risk or exceptional lost profit.

5° It cannot be denied that, today, loans with exorbitant interest are sometimes made under various guises. The encyclical *Rerum Novarum* lists this among the causes of social crises: "The insatiable greed of usury, condemned multiple times by the Church, is practiced in different forms by avaricious and profit-seeking men." Those who demand excessive interest sin against commutative justice and must repay the excess.

In practice, it's often very difficult to determine a fair interest rate. The Sacred Penitentiary, on April 18, 1889, warned against general interest rate regulations and referred to common practice maintained by conscientious individuals in various places and times. Similarly, the Congregation for the Propagation of the Faith, in 1873, stated that those who take a very high interest should not be troubled, provided the quality and probability of risk are considered. However, today, where there's generally more security for the principal, a truly moderate interest rate is set: 3, 4, 5% before the war, then 5 and 6 or even up to 7 or sometimes 8%; but now it's lower again.

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4 Translation

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In contracts, as they should be just, equality is required; thus, in a loan due to the nature of the loan, as is often defined, nothing beyond the principal sum should be received. If the lender incurs a profit [**lucrum cessare**], or a loss arises, or there's a risk of losing the principal, or unusual efforts are needed for its recovery, one can indeed seek compensation for these, but always with two conditions in mind: the first is that a new title truly arises from these, and the second is that nothing more than what he truly demands is exacted. Therefore, all contracts in which either an interest is imagined that is compensated or more is sought than what adequate compensation requires, depart from the rule of justice and are subject to restitution. Thus, it's clearly imprudent and illicit, and evidently exposes oneself to the danger of injustice, for those who, because the risk, which we hint at, often occurs in such a situation, always and ever demand the same profit, as if the risk always occurs, and when it occurs, they always seek the same compensation. They are not excused because they receive less interest than what is permitted by the law of the kingdom; because something is not right merely because it deviates less from justice, unless it is entirely conformed to the form of what is right, and not by human but by divine law and by natural law, which is tenacious of equity, human actions should be weighed. Only those act correctly who, looking to individual cases, only demand compensation when the risk truly intervenes, and then seek no other compensation than what corresponds to the seriousness of the risk, which therefore must be estimated by the judgment of the wise and prudent.

I.

S. C. S. O. sub d. 13. Ian. 1780. ad R. P. D. Vic. Ap. NN. — « Cum litas in contractibus, ut iusti sint, requiratur, nihil in mutuo vi m saepe definitum est, accipiendum ultra sortem principalem. Quod si m lucrum cessare, vel damnum emergere, aut periculum imminere ami sortis, vel assumendi insolitos labores pro illius reparatione contingat, quidem compensationem repeti posse, duabus tamen conditionibus sem oculos positis, quarum prima, ut reapse titulus novus aliquis ex ist currat, altera ut nihil amplius, quam vere ille postulat, exigatur. Quan a iustitiae regula deficere, et restitutioni obnoxios esse omnes contrac quibus aut interesse fingitur, quod compensetur, aut plus petitur, quoe quata compensatio requirit. Imprudenter igitur atque illicite agere, i stoque se iniustitiae discrimini committere patet, qui ex eo quod per quod innuimus, plerumque in *tali loco* occurrat, *lucrum semper atque semper lucrum requirunt*, quasi periculum semper intercedat, et cum a eandem semper remunerationem petant: *neque excusari quod minorem quae regni lege permittitur, usuram percipiunt; cum non ideo rectum quid, quod a iustitia minus defectit, nisi ad recti formam prorsus comp neque humana sed divina lege ac lege naturali, quae aequitatis ten hominum actiones pensandae sint. Eos tantum recte se gerere, qui ad duos casus respicientes tunc solum compensationem exposcunt, cum per revera intervenit, et non aliam tunc compensationem quaerunt, quam q riculi gravitati, quae proborum idcirco prudentumque iudicio aestiman respondet ».*

First and foremost, it is established regarding the loan itself that precisely nothing should be received beyond the principal sum. However, if something is received on account of a probable impending risk, the lenders should not be disturbed, provided that consideration is given to the quality of the risk, the probability of the same, and a proportion is maintained between the risk and what is received. In these very words, it was defined by the Sacred Congregation for the Propagation of the Faith on September 12, 1645. The decree issued for the Missions in China is attached here. The following doubt was:

In the aforementioned kingdom, it has been sanctioned by law that thirty percent should be received for a loan, without regard to lost profits or emerging damages. The question is whether it is lawful for the Chinese, for the loan of their money, even if there is no lost profit or emerging damage, to receive the aforementioned thirty percent quantity set by the law of the kingdom. The reason for the doubt is that there is some risk in recovering the money, namely that the borrower might flee, or delay in paying, or that it might be necessary to seek it before a judge, or because of other reasons of this kind.

The Most Eminent Fathers judged that regarding the loan itself, nothing should be received beyond the principal sum. However, if they receive something due to a probable impending risk, as in the case, they should not be disturbed, provided that consideration is given to the quality of the risk, the probability of the same, and a proportion is maintained between the risk and what is received.

With the same Congregation supplicating, the Most Holy Lord, in order to maintain uniformity in preaching and its practice, strictly commanded all and singular missionaries of whatever order, religion, and institute, including the Society of Jesus, in the kingdoms of China, or those currently in China, or those who will be there, under the penalty of excommunication pronounced upon them, reserved especially to His Holiness and the Holy Apostolic See, to diligently observe the aforementioned responses and resolutions, to use them in practice, and to ensure that those to whom it pertains observe and practice them, until His Holiness or the Holy Apostolic See decrees otherwise.

One can now ask what kind of risk should be, its reason, and nature, so that, with this concurrent title, the lender can receive something beyond the principal. In this question, it is certain that not just any risk is deemed suitable and appropriate for some profit to be obtained from the loan. For when the title from which a just and legitimate reason arises, that something more beyond the owed principal from the loan can rightly be demanded, it should always be external and not connected and innate to the nature of the loan. Hence it clearly follows that if the risk arises only from those circumstances which are common to all lenders there and cannot be separated from the nature of the loan, then any profit captured from the loan cannot be purified from the stain of usury. Therefore, with plagues, fires, Turkish persecutions, and other such misfortunes, which although more frequent in Constantinople, always threaten lenders in any city, care must be taken not to demand something in the loan beyond the principal due to this common risk, which the force and nature of the loan itself brings. The investigation seems greater when the risk of losing the principal is imminent either from the fault of the borrower himself, because he is a sharper, deceitful, cunning, can deceive the creditor by flight or malicious evasions, or when, apart from the fault of the borrower, other dangers threaten the creditor from the circumstances of place, time, and people, which keep him very anxious and worried about recovering the sum. Although the greater dangers always come from the fault of the borrower, it is very difficult to determine generally in all these cases whether, how, and how much such a risk can be estimated, from which a legitimate title is provided to the lender to seek profit above the principal. The diligence and doctrine of Confessors should focus on estimating and weighing each matter in its own right. They should consider individual cases, inquire about the quality and probability of the risk, see if by securing a pledge all danger is removed, maintain a proportion between the risk and what is permitted to the lender to gain above the principal, consult approved authors, and especially adhere to the opinions and principles approved by this Apostolic See, both in the aforementioned decree of the Sacred Congregation for the Propagation of the Faith of 1645 and in the Encyclical Letter of Benedict XIV “Vix pervenit” published in 1745, a copy of which is attached here.

II.

S. R. Inquis. An. 1784. Mart. 18. ad Vic. Ap. D. D. M. Super quaestione mutui. — « Atque illud in primis est exploratum ratione mutui immediate, et praecise nihil esse accipiendum ultra sortem principalem. Si vero aliquid percipiatur ratione periculi probabiliter imminantis, non esse mutuantes inquietandos, dummodo habeatur ratio qualitatis periculi, et probabilitatis eiusdem, et servata proportionem inter periculum, et id quod accipitur. His ipsis verbis ita definitum est a Sacra Congregatione de Propaganda Fide die 12. Septembris an. 1645., cuius decretum pro Sinensibus Missionibus editum hic adiungitur. Dubium autem sequens erat:

In praefato regno lege sancitum est, ut in mutuo triginta pro centum accipiantur, absque respectu lucri cessantis, aut damni emergentis. Quaeritur utrum Chinensibus sit licitum pro pecuniarum suarum mutuo, licet non interveniat lucrum cessans, aut damnum emergens, praedictam pro centum triginta quantitatem regni lege taxatam accipere: et causa dubitandi est, quia in recuperanda pecunia est aliquod periculum, scilicet quod qui accipit mutuatum fugiat, vel quod tardet in solvendo, vel quod necessarium sit coram iudice repetere, vel propter alia huiusmodi.

Eminentissimi Patres censuerunt ratione mutui immediate, et praecise nihil esse accipiendum ultra sortem principalem: si vero aliquid accipiant ratione periculi probabiliter imminantis prout in casu, non esse inquietandos, dummodo habeatur ratio qualitatis periculi, et probabilitatis eiusdem, ac servata proportionem inter periculum, et id, quod accipitur.

Eadem Congregatione supplicante, Sanctissimus D. N. ad conservandam uniformitatem in praedicatione, eiusque praxi, omnibus, et singulis Missionariis cuiuscumque ordinis, religionis, et instituti, etiam Societatis Iesu in regnis Sinarum, aut Chinae pro tempore existentibus, vel exituris sub poena excommunicationis latae sententiae Sanctitati Suae, et Sanctae Sedi Apostolicae specialiter reservatae, districte praecipiendo mandavit, quatenus praedicta responsa, et resolutiones diligenter observent, illisque in praxi utantur, ac ab illis, ad quos pertinebit, observari, et practicari faciant, donec Sanctitas Sua, vel S. Sedes Apostolica aliud ordinaverit.

Quaeri nunc potest quale esse debeat periculum, et quae eius ratio, et natura, ut hoc concurrente titulo, possit mutuans aliquid ultra sortem recipere. In hac autem quaestione pro certo tenendum est, non quaecumque periculum satis aptum, atque idoneum aestimandum esse, ut aliquod lucrum ex mutuo percipi possit. Nam cum titulus, ex quo iusta, ac legitima causa consurgit, ut quiddam amplius ultra sortem ex mutuo debitam rite exigatur, debeat semper esse extrinsecus, nec mutui naturae coniunctus, et innatus: hinc plane consequitur, quod si periculum ex iis circumstantiis dumtaxat proficiscatur, quae omnibus mutuantiis istis communes sunt, nec ab ipsa mutui natura disiungi possunt, tunc certo quodlibet lucrum, quod ex mutuo captatur, ab usurae labe purgari minime potest. Quapropter cum pestis, incendia, Turcarum persecutiones, aliaque huiusmodi infortunia, quae quamvis

Constantinopoli frequentiora sint, in quacumque tamen urbe semper instant mutuanti- bus, maximopere cavendum est, ne propter commune hoc periculum, quod ipsius mutui vis, ac natura importat, aliquid in mutuo ultra sortem exigatur. Maiorem potius habere videtur indaginem, cum periculum amittendae sortis immineat vel ex culpa ipsiusmet mutuatarii, quod veterator sit, fallax, vafer, quod fuga, aut malitiosis tergiversationibus creditorem fallere possit, vel cum praeter ipsius mutuatarii culpam, alia instent. creditori pericula ex loci, temporis, ac personarum circumstantiis, quae ipsum in sorte recuperanda valde anxium, atque sollicitum teneant. Quamvis vero potiora semper haberi debeant pericula, quae ex culpa mutuatarii proficiscuntur, attamen in his omnibus casibus an, quomodo, et quanti aestimari tale periculum possit, ex quo titulus legitimus mutuanti praebeatur ad lucrum supra sortem captandum, perdifficile sane est generatim statuere. Ad unamquamque rem aestimandam, momentoque suo ponderandam, incumbat Confessariorum solertia ac doctrina: ipsi perpendant singulos casus, inquirent super qualitate, et probabilitate periculi, videant si assecuratione pignoris, omne absit periculum, servent proportionem inter periculum, atque id quod mutuanti lucrari sopra sortem permittitur, probatos auctores consulant, atque praesertim adhaereant sententiis, atque principiis ab hac Apostolica Sede approbatis, tam in supra laudato decreto S. Congregationis de Propaganda Fide anni 1645., quam in Epistola Encyclica Benedicti XIV. *Vix pervenit* edita anno 1745., cuius exemplum hic allegatur ».

Sacred Penitentiary regarding the doubts of D. Denavit, Professor of Theology at the Seminary of St. Irenaeus in Lyon. When doubts about the matter of usury are presented to the Sacred Penitentiary, it always refers back to the doctrine of Supreme Pontiff Benedict XIV, which is indeed quite clear and evident for those who genuinely wish to examine it.

However, there are some priests who argue that it is lawful to receive an additional five percent solely by the power of the Prince's law, without any other title, be it of emerging damage or lost profit. They say that the Prince's law is a legitimate title since it transfers the ownership of the additional amount, just as it transfers ownership in prescription. Thus, they completely nullify divine law and ecclesiastical law, which prohibits usury.

Therefore, the undersigned petitioner humbly requests that the following doubts be resolved: I. Whether he can in conscience deny absolution to the aforementioned priests. II. Whether he should. Lyon, May 25, 1830. Professor Denavit.

The Sacred Penitentiary, having carefully and thoroughly considered the proposed doubts, deemed it appropriate to respond: The priests in question should not be disturbed until the Holy See issues a definitive decision, to which they are prepared to submit; therefore, there is no obstacle to their absolution in the sacrament of Penance. Given in Rome, at the Penitentiary, on September 16, 1830. E. Cardinal De Gregorio, Chief Penitentiary, F. Fricca, Secretary of the Sacred Penitentiary.

IV.

S. Poenitentiariae ad dubia D. Denavit Professoris theologiae in Seminario S. Irenaei Lugdunensi. — « Quando Sacrae Poenitentiariae dubia circa materiam usurae proponuntur, semper remittit ad doctrinam Summi Pontificis Benedicti XIV., quae revera sat clara et perspicua est pro iis qui bona fide eam perscrutari volunt.

Attamen sunt quidam Presbyteri, qui contendunt licitum esse percipere auctarium quinque pro centum solius vi legis Principis absque alio titulo vel damni emergentis vel lucri cessantis: quia, inquiunt, lex Principis est titulus legitimus, cum transferat dominium auctarii sicut transfert dominium in praescriptione: et sic prorsus annihilant legem divinam et legem ecclesiasticam, quae usuras prohibet.

Quare infrascriptus Orator humiliter supplicat, ut sequentia dubia solvantur: *I. Utrum possit in conscientia denegare absolutionem presbyteris praefatis. II. Utrum debeat.* — Lugduni, 25. Maii 1850. *Denavit Professor.*

Sacra Poenitentiaria, diligenter ac mature perpensis dubiis propositis, respondendum censuit: *Presbyteros, de quibus agitur, non esse inquietandos quousque Sancta Sedes definitivam decisionem emiserit, cui parati sint se subicere; adeoque nihil obstande eorum absolutioni in sacramento Poenitentiae.* Datum Romae, in Poenitentiaria, die 16. Septembris 1850. — *E. Card. De Gregorio maior Poenit., F. Fricca Sacrae Poenit. Secretar.* »

General Congregation of the Holy Office approved by Gregory XVI on the queries of the Chapter of the Collegiate Church of Locarno. Queries from the Chapter of Locarno.

"Most Blessed Father. The Chapter of this Collegiate Church of Locarno, in the diocese of Como, Swiss territory, has most of its prebends [**a stipend paid to a canon of a cathedral**] in money, mainly derived from the abolition of tithes by a government decree. This money must be invested to live on its returns and to fulfill the burdens attached to the benefices.

Due to the circumstances of the times and places, either there is no way to invest the aforementioned money in fruitful properties, which are scarce in relation to the population; or, due to the scarcity of such properties, it would only yield two and a half percent annually, which would excessively worsen the prebends, which are already modest in themselves.

Censuses are prohibited by these municipal laws: and they are insecure, as there is no mortgage office in these parts that assures the freedom and adequacy of the funds on which they are to be established. Moreover, those who ask us for money for their own interests usually refuse to submit to censuses, preferring to borrow it with an annual contribution of four or five percent.

Given this, it is asked: I. Whether the necessary honest sustenance of the beneficiaries, which must come from the returns of the capitals of such prebends, is, in these circumstances, a sufficient title equivalent to the others already approved by the Church, by which it is lawful for such a contract to give the endowment money of these prebends at an interest of four or five percent, backed by a mortgage on real estate, to ensure the perpetuity of the prebends. II. Whether this title, if admissible, can be extended in favor of churches, monasteries, and other pious places, as well as wards and other people who find themselves in the same circumstances described above and need to invest their money to support themselves honestly. III. Whether civil laws and

procedures, which now generally approve such contracts and enforce them, as well as the common tacit consent of the people, who have substituted them for other more complicated and difficult contracts due to the custom established over the centuries, are enough to justify them. IV. Whether the authority of our Ordinary and many wise and good ecclesiastics, who, in view of the aforementioned circumstances, have a favorable opinion and approve of similar contracts, is reliable. V. What consideration should be given to the reasons that Scipione Maffei presents in his three books on the employment of money dedicated to Benedict XIV and approved by the inquisitor of Padua in 1744. VI. Whether the Bull 'De usuris' issued by the blessed memory of Benedict XIV in 1745, probably following Maffei's work, at no. 3 of it and in the article 'de contractu autem', etc. can be interpreted favorably for such contracts. VII. Assuming such contracts are illicit, what is to be decided about those already made and the returns already received? VIII. Whether such contracts can be made lawful at least by assuming the fortuitous risk of the property pledged at the expense of the prebend, with the necessary provisions, as in censuses. The undersigned petitioners humbly desire and implore from Your Holiness a clear and timely decision on these doubts, for the regulation of their own and other generally agitated consciences on the matter. Locarno. May 13, 1831.

The agent adds the general and very great scarcity of cash or funds, these usually in the possession of a few. Without lending money, most landowners, mostly unfit for trade and the arts, having consumed the few capitals, would easily fall into misery. Others, deprived of their own money and solid funds to change into cash, could not benefit from the industry. Lacking Monti di Pietà, they would often be obliged to sell the small paternal inheritance, and often at a very low price, in their needs. The agitation of consciences is extremely great. Therefore, various Ordinaries, having considered everything, have pronounced in favor. Otherwise, there would be a general collapse and a total impediment to business and industry.

Wednesday, August 31, 1831. After having proposed the above prayers of the Chapter of the Collegiate Church of Locarno, which had already been distributed by hand along with the votes of the Lord Consultants, the most eminent and most reverend Lords said: To I. II. III. IV. They should not be disturbed, and they should acquiesce, as long as they are prepared to abide by the mandates of the Holy See. To V. VI. VII. VIII. they should consult the encyclical of Benedict XIV 'Vix pervenit' and the approved authors. Wednesday, September 7, 1851. Our Most Holy Lord Gregory XVI, in the usual audience granted to the R. P. D. Assessor of the H. O., approved the Eminent resolutions.

VI.

Congregationis Generalis sancti Officii a Gregorio XVI. approbatae circa quaesita Capituli Collegiatae Locarni. — « Quesiti del Capitolo di Locarno. —

* *Beatissimo Padre.* Il Capitolo di questa Collegiata di Locarno, diocesi di Como, territorio svizzero, ha la maggior parte delle proprie prebende in danaro, ricavato principalmente dall'estinzione delle decime avvenuta per decreto governativo: il qual danaro egli impiegar deve, per viverne dei frutti, ed adempire ai pesi annessi ai beneficii.

Per le circostanze de' tempi e dei luoghi, o non si trova affatto come investire il danaro suddetto in stabili fruttiferi, i quali scarseggiano assai in proporzione della popolazione; o per la carezza di detti stabili, non frutterebbe che il due e mezzo per cento annualmente, il che peggiorerebbe eccessivamente le prebende già per sè stesse meschine.

I Censi si vogliono proibiti da queste leggi municipali: e sono mal sicuri, non esistendo in queste parti l'ufficio delle ipoteche, che accerti la libertà e sufficienza de' fondi su' quali vogliansi stabilire. Inoltre quegli stessi, che per fare i loro interessi ci chiedono il danaro, ricusano ordinariamente di sottoporsi ai censi, e amano meglio di riceverlo a prestanza col contribuire il quattro o il cinque per cento annualmente.

Ciò premesso si domanda: *I. Se la necessaria onesta sustentazione dei beneficati, che dee provenire dal frutto dei capitali di tali prebende, è dessa in tali circostanze un sufficiente titolo equivalente agli altri già approvati dalla Chiesa, per cui sia lecito un tale contratto di dare il danaro dotale di dette prebende a interesse del quattro o cinque per cento, dietro ipoteca di beni stabili, affine di assicurare la perpetuità delle prebende. II. Se questo titolo, supposto ammissibile, si possa estendere a favore anche delle chiese, monasteri, e altri luoghi pii, come anche dei pupilli e di altre persone che si ritrovano nelle circostanze medesime di sopra descritte, ed hanno bisogno di far fruttare il proprio danaro per sostenersi onestamente. III. Se le leggi e procedure civili, che ormai approvano generalmente tali contratti, e li fanno eseguire, non che il comune tacito consenso dei popoli, che per l'uso invalso de' secoli sembra li abbiano per maggior comodo e facilità sostituiti ad altri contratti più complicati e difficili, bastino a giustificarli. IV. Se sia attendibile l'autorità del nostro Ordinario e di molti savii e dabbene ecclesiastici, che, avute di mira le circostanze suddette, opinano favorevolmente e simili contratti approvano. V. Qual*

considerazione meritino in proposito le ragioni, che adduce Scipione Maffei ne' suoi tre libri dell'impiego del danaro dedicati a Benedetto XIV. ed approvati dall'inquisitor di Padova l'anno 1744. VI. Se la Bolla De usuris emanata dalla felice memoria di Benedetto XIV. l'anno 1745. probabilmente in sequela dell'opera del Maffei, al n. 3. di essa e all'articolo de contractu autem e seq. si possa interpretare favorevolmente a tali contratti. VII. Supposti illeciti tali contratti, che si ha a risolvere intorno a quelli già fatti, ed ai frutti già percepiti? VIII. Se tali contratti si possano rendere leciti almeno coll'assumere il pericolo fortuito del fondo assegnato in pegno a carico della prebenda, colle dovute proposizioni, come nei censi. I sottoscritti oratori umilmente da Vostra Santità desiderano ed implorano una chiara ed opportuna decisione di questi loro dubbj, per regolamento delle proprie e delle altrui coscienze generalmente agitate in proposito. Locarno. 15 Maggio 1831.

L'agente aggiunge la generale e grandissima scarsezza di numerario o di fondi, questi ordinariamente in possesso di pochi. — Tolta la prestanza di danari, i possidenti per la maggior parte inabile al commercio e alle arti, consumati i pochi capitali, si ridurrebbero facilmente alla miseria. — Gli altri sprovvisti di danaro proprio e di fondi stabili da cambiare in contanti, non potrebbero avvantaggiare coll'industria. — Mancando Monti di Pietà, sarebbero obbligati sovente a vendere la piccola eredità paterna, e sovente a vilissimo prezzo, nelle loro necessità. — L'agitazione delle coscienze è oltre modo grande. Onde diversi Ordinarii, tutto considerato, si sono pronunciati in favore. Altrimenti nascerebbe un dissesto generale, e totale impedimento degli affari e dell'industria.

Feria IV. 31. Augusti 1831. Propositis superioribus Capituli Collegiatae Locarni precibus, quae iam per manus una cum Dominorum Consultorum suffragiis distributae fuerant, eminentissimi et reverendissimi Domini dixerunt: Ad I. II. III. IV. Non esse inquietandos, et acquiescant, dummodo parati sint stare mandatis sanctae Sedis. Ad V. VI. VII. VIII. consulant encyclicam Benedicti XIV. Vix pervenit, et probatos auctores. Feria IV. 7. Septembris 1831. Sanctissimus Dominus noster Gregorius XVI. in solita audientia R. P. D. Assessori S. O. impertita, Eminentiss. resolutiones approbavit. »

To the Sacred Penitentiary regarding the new queries of Professor D. Denavit. «To the Sacred Penitentiary, the undersigned petitioner presents again: From the response of the Sacred Penitentiary directed to the undersigned petitioner on September 16, 1830, priests who argue that the law of the prince is a sufficient and legitimate title for receiving something beyond the principal amount in a loan, without any other title commonly admitted by Theologians, are to be absolved until the Holy See has issued a definitive decision, to which they are prepared to submit: and I humbly and willingly accept this response. However, notwithstanding the aforementioned response of the Sacred Penitentiary, having consulted with reputable authors and considering the teachings of almost all the seminaries of France, especially those directed by the priests of the Congregation of Saint Sulpice, the opinion which rejects the title of civil law as insufficient seems far more probable, safer, and the only one to be held in practice until the Holy See decides. Therefore, to the faithful who seek advice from me on whether they can receive an additional amount from a loan, and who have no title commonly admitted by Theologians except for the title of civil law, I answer that they cannot demand the aforementioned additional amount and deny sacramental absolution if they demand it. Similarly, I deny absolution to those who, having received such usury, that is, by the sole title of the law, do not wish to return it. It is asked: I. Whether I should be stricter and more severe towards such faithful. II. What method

of action should be followed in practice towards the faithful, until the Holy See has issued a definitive sentence. Lyon, September 24, 1831. Professor Denavit.

The Sacred Penitentiary, having considered the doubts proposed by the petitioner, responds: To I. Affirmatively: since from the given response of the Sacred Penitentiary, it is clear that such faithful, who act in good faith in this manner, should not be troubled. To II. It is provided in the first: hence, the petitioner should strive to conform in practice to the prior response of the Sacred Penitentiary under the date of September 16, 1830. Given in Rome, at the Sacred Penitentiary, on November 11, 1831. A. F. De Retz, Regent of the Sacred Penitentiary, E. Fricca, Secretary of the Sacred Penitentiary. »

VII.

Sacrae Poenitentiariae ad nova quaesita D. Denavit professoris. — « Ad sacram Poenitentiariam iterum exponit orator infrascriptus: E responso sacrae Poenitentiariae ad oratorem infrascriptum directo die 16. septembris 1830. absolvendi sunt presbyteri, qui contendunt legem principis esse titulum sufficientem et legitimum aliquid percipiendi ultra sortem in mutuo absque alio titulo a Theologis communiter admissio, donec sancta Sedes definitivam decisionem emisit, cui parati sint se subiicere: et huic responso humiliter et libenter acquiesco. Attamen, salvo sacrae Poenitentiariae responso praefato, consultis auctoribus probatis, et attenta doctrina omnium fere Seminariorum Galliae, ac praesertim eorum quae a presbyteris Congregationis sancti Sulpitii diriguntur, sententia quae reiecit titulum legis civilis tamquam insufficientem videtur longe probabilior, securior, et sola in praxi tenenda, donec sancta Sedes definierit. Quapropter fidelibus, qui a me consilium petunt utrum possint auctarium percipere ex mutuo, et qui nullum habent titulum a Theologis communiter admissum praeter titulum legis civilis, respondeo, eos non posse praefatum auctarium exigere, et denego absolutionem sacramentalem si exigant. Pariter denego absolutionem iis, qui, perceptis huiusmodi usuris, idest vi solius tituli legis, nolunt restituere. Quaeritur: I. *Utrum durius et severius me habeam erga huiusmodi fideles.* II. *Quae agendi ratio in praxi tenenda erga fideles, donec sancta Sedes definitivam sententiam emisit.* Lugduni 24. septembris 1831. Denavit Professor.

Sacra Poenitentiaria, perpensis dubiis, quae ab oratore proponuntur, respondit: *Ad I. Affirmative: quandoquidem ex dato a sacra Poenitentiaria responso liquet, fideles huiusmodi, qui bona fide ita se gerunt, non esse inquietandos. Ad II. Provisum in primo: unde orator priori sacrae Poenitentiariae responso sub die 16. septembris 1830. sese in praxi conformare studeat.* Datum Romae, in sacra Poenitentiaria, die 11. Novembris 1831. A. F. De Retz sacrae Poenitentiariae Regens, E. Fricca sacrae Poenitentiariae Secretar. »

To the Sacred Penitentiary regarding the questions of John Anthony Avvaro, Doctor of Sacred Theology and royal professor. Most Eminent and Reverend Lord. The royal law of Piedmont generally and without any restriction allows that whoever lends money to anyone else can stipulate and demand an annual increase of 5% over the principal. Hence, in the diocese of Pinarolo and other neighboring dioceses, there is a very serious controversy among theologians about whether, in cases where on one hand there is no title of foregone profit or of emerging damage or of extraordinary risk of losing the principal, and on the other hand, the command of charity towards one's neighbor does not oblige lending simply and without interest, it is allowed for the

lender to receive and retain that increase. For some argue that this increase is entirely usurious and illicit, while others argue that it is completely free from the stain of usury and wholly permissible. What makes the controversy even more complicated is that all claim to rely on the authority of Benedict XIV, or at least that he is not at all opposed to them.

Indeed, theologians who defend the first opinion say that the increase in question was condemned by Benedict XIV, implicitly indeed in the encyclical of November 1, 1745, *Vix pervenit*, as is clear from a careful reading of it; but explicitly in his work on the diocesan synod, book X, chapter IV, numbers 2 and 3, with these words: "Calvin partially agreed with the Greeks, who in Ezekiel chapter 18 taught that it is permissible to demand some moderate profit, not indeed from a poor person, but from a rich one, precisely on account of the loan. The error casually insinuated by Calvin was expressly defended by Charles Molinaeus in his treatise on usury, where in number 10 he boldly asserts that usury is not forbidden except insofar as it is against charity. This same wrong opinion was embraced and defended by Claude Salmasius in two treatises, one titled *On Usury*, the other *On Bank Interest*, in which he absolves usury from all blame, unless it harms charity, because it is the rent of loaned money. A few Catholic doctors were not afraid to subscribe to the impious opinions of Calvin and Molinaeus: namely, those who, when it comes to a loan by which money or some other thing is given for business, excuse from the stain of usury the profit that is derived from the loan, provided it is moderate and follows the measure defined by the laws of the country. Moreover, although Benedict XIV speaks in the Diocesan Synod only as a private doctor, he undoubtedly knew best what he wanted to condemn in his encyclical: therefore, whatever he later wrote about usury in the Synod, and especially in the mentioned chapter IV, where in number 10 he briefly refers to the doctrine defined in the encyclical, must be taken as an explanation of that same encyclical, from which it would be a sin to depart.

But theologians who defend the second opinion say that this increase is not perceived from the loan itself because of the nature of the loan, or solely because of the loan, or by the force of the loan itself, or precisely because of the loan, that is, foregone profit, emerging damage, or some other external title being removed; which was rightly condemned as usurious and wholly unlawful by Benedict XIV, both in the encyclical §3, numbers 1 and 2, and in the cited place of the Synod, number 11. But because of the external reason, cause, force, and title of civil law, which transfers the ownership of the increase from the borrower to the lender, in the same way that the ownership of things is transferred from one to another by legal prescription; or because of the public good, which, given the changing circumstances, could scarcely or not at all be obtained in the present state of affairs without that increase; or because of the spontaneous, silent, and mutual consent to the increase permitted by law on the part of society as a whole, which has the right to dispose of its things as it pleases, and especially on the part of those who sometimes have money and sometimes are in need, and sometimes lend money and sometimes borrow; or because of the custom almost universally received in the Catholic world, even among men of tender conscience, of demanding a moderate increase defined by the laws of the country; or for other such reasons, which Benedict XIV nowhere weighs or mentions. To the argument, however, which the defenders of the first opinion draw from the encyclical and from the work on the diocesan synod, they reply in four ways.

They reply 1. That Benedict XIV, in the encyclical *Vix pervenit*, established only this, namely, that no increase, even a moderate one, can be received beyond the principal from the loan when someone is either bound to assist another with a simple and unencumbered loan without any increase, which, because of the precept of charity, and from that alone, takes place in many cases, and that because then no legitimate title can concur with the loan to demand something beyond the principal; or he gives a loan in those cases where he can celebrate no other just contract except a single loan, which also happens in many circumstances, for example, when one credits another with wine, oil, etc., as is clear from §3, number 5, where after he has defined it to be falsely and rashly asserted, that there always and everywhere are to be found either other legitimate titles along with the loan, or even without the loan, other just contracts, by the help of which titles or contracts, whenever money, grain, or some other thing of that kind is credited to anyone, it is always permissible to receive a moderate increase beyond the principal, safe and sound; and he who would affirm so not only opposes divine teachings and the judgment of the Catholic Church concerning usury, but even common human sense and natural reason without a doubt; he gives the reason for this definition and concludes with these notable words: For no one can be unaware that in many cases a man is bound to assist another with a simple and unencumbered loan, especially as Christ the Lord himself teaches: Do not turn away from the one who wants to borrow from you; and that in many circumstances, besides a single loan, there can be no place for any other true and just contract with another; and therefore, according to Benedict XIV, whenever money is lent, and the precept of charity does not oblige to lend it with a simple and unencumbered loan, it can always be found along with the loan, nay, it must everywhere be at hand, a legitimate title, for example, civil law, the public good, etc., by whose aid it is permissible to receive a moderate increase beyond the principal, according to the well-known rule: In necessary matters, the expression of one is the exclusion of another, or at least Benedict XIV is in no way opposed to this opinion.

They reply 2., that even in what he wrote about usury in the cited chapter IV of the Synod, numbers 2 and 3, Benedict XIV. is by no means opposed to this opinion either. There, he merely teaches that the perpetual doctrine of the Catholic Church concerning usury, after the schismatic Greeks, was contradicted by Calvin, who erroneously taught that some moderate profit could be rightfully demanded from the rich precisely on account of the loan (in which the essence of usury is found); then by Charles Molinaeus, who audaciously claimed that this kind of usury, admitted by Calvin and evil in its nature, was not forbidden unless it was against charity; then by Claude Salmasius, who wrongly acquitted this same usury from all guilt, under the false pretext that it is the wage of loaned money; and finally, by a few certain Catholic doctors, who, not fearing to subscribe to the impious opinions of Calvin and Molinaeus, boldly and erroneously taught that usury is not forbidden unless it is against charity, and that the profit demanded and obtained by merchants from a loan precisely on account of the loan is excused from the stain of usury as long as it is moderate and conforms to the laws of the country. All these things certainly do not differ even a nail's breadth from the doctrine contained in the Encyclical. But it's one thing for an increase, even a moderate one defined by the country's laws, that is obtained from a loan precisely because of the loan, to be usurious and unlawful; it's another thing for that moderate increase defined by the country's laws, obtained from a loan not precisely because of the loan but because of civil law, or for other extrinsic reasons mentioned a little earlier, to be usurious and illicit. Benedict XIV. affirms the former, but he doesn't say a word about the latter.

They reply 3., supposing that Benedict XIV. in the Synod actually opposed this opinion, that there would be no blame for someone who, relying on solid reasons, modestly deviated from his private opinion or explanation. For he himself openly professes at the end of the preface to the Diocesan Synod that in all matters to which no weight has been added from the public authority of the Church, such as the explanation in question, he wishes to define nothing in the Synod and to present it as a decree. He even cites the authority of Melchior Cano and the example of Innocent IV, who, although he wrote his commentaries on the books of the Decretals while he held the supreme pontificate, never arrogated to himself that whatever he had written in that work should be regarded as a definitive matter. But he easily allowed his opinions, which he proposed as a private doctor, to be attacked by other doctors, as is clear, etc.

They reply 4., even supposing that Benedict XIV. opposed this opinion in the Encyclical, that no more argument can be derived from it to condemn the moderate increase permitted by law that is obtained in the present state of affairs. Because a change in circumstances could have, and indeed has brought about, a clear variation, not regarding the principles upon which the Catholic Church's doctrine on usury and loans rests, which are always and entirely unchangeable, but regarding their application.

Having carefully considered, as far as the modest powers of my intellect allow, the teachings of Benedict, I believe that while it is more moderate, it seems more probable: there is valid reason to doubt whether this doctrine, by itself, is sufficient to resolve this controversy. However, even with this opinion of mine, which I should trust little, it remains uncertain whether such an additional charge can be received with a clear conscience; so that, removing all doubt, I am prepared to adequately respond to certain confessors who recently consulted me about the same controversy, and also to others who, by virtue of the offices I perform, whether within or outside the sacred tribunal of Penance, will consult; I humbly and earnestly beseech your Eminence in the Lord to send me the resolution of the three questions I submit here:

I. Whether the additional charge in question is lawful. And insofar as this question cannot be directly resolved from the teachings of Benedict XIV and other judgments of the Apostolic See, II. Whether penitents, who have received this additional charge either in doubt or in bad faith, can be sacramentally absolved, with no restitution made or promised here and now, provided they sincerely promise to carry out whatever the Apostolic See decides on this matter. And insofar as some claim that similar questions have already been provisionally answered several times in the name of the Holy Office and the Apostolic See, of which decrees and their contents I am unaware, III. Whether those who have no title of lost profit or emergent damage or extraordinary risk of losing capital, and who are not involved in cases where the commandment of charity obliges them to lend simply and without an additional charge, may lend money, having stipulated or agreed to an annual additional charge of 5% over the principal, as permitted by royal law, under the same condition of obeying future determinations of the Apostolic See on this matter.

Trusting greatly that your Eminence will kindly comply with my requests in this matter so essential to me, I am and will always be, in Pinerolo, on the 22nd of January 1832, Your Eminence's Most Humble, most obedient, and most devoted Servant,

Joseph Antonius Avvaro, Doctor of Sacred Theology, and royal professor of the same faculty, Canon Theologian, and General Pro-Vicar.

The Sacred Penitentiary deemed it appropriate to send to the beloved in Christ, Joseph Antonio Avvaro, the resolutions previously given on certain doubts concerning usury, namely: (they are exactly those mentioned above, no. V.) Given in Rome, in the Sacred Penitentiary, on the 11th of February 1832. E. Cardinal De Gregorio, Major Penitentiary. D. Fratellini, Secretary of the Sacred Penitentiary.

VIII.

Sacrae Poenitentiariae ad quaestiones Ioannis Antonii Avvaro S. T. doctoris et regii professoris. — « *Eminentissime et Reverendissime Domine*. Regia lex pedemontana universim et sine ulla restrictione permittit, ut, quisquis alteri cuicumque pecuniam mutuatur, stipulare et exigere possit annum auctarium 5. pro 100. supra sortem. Hinc in Pinaroliensi aliisque finitimis dioecesium gravissima inter Theologos fervet controversia, an, in casibus in quibus ex una parte nullus adest titulus lucri cessantis vel damni emergentis vel periculi extraordinarii sortis amittendae, ex altera vero praeceptum charitatis erga proximum non obligat ad mutuandum simplici ac nudo mutuo, liceat mutuanti illud auctarium recipere et retinere. Alii enim auctarium illud omnino usurarium et illicitum, alii vero ab omni usurae labe immune prorsus licitumque esse propugnant: et quod controversiam valde implicationem reddit, omnes gloriantur se niti auctoritati Benedicti XIV. aut saltem eum sibi nullatenus adversari.

Nimirum Theologi, qui primam sententiam tuentur, dicunt auctarium, de quo agitur, a Benedicto XIV. reprobatum fuisse, implicite quidem in encyclica diei 1. Novembr. 1743. *Vix pervenit*, ut patet ex attenta eius lectione; explicite vero in opere *de Synodo dioecessana* lib. X. cap. IV. num. 2. et 3. his verbis: *Graecis ex parte consensit Calvinus, qui ad cap. XVIII. Ezechielis licere docuit aliquod moderatum lucrum, non quidem a paupere, sed a divite, praecise ratione mutui, exigere*. Errorem a Calvino obiter insinuat, ex professo propugnavit Carolus Molinaeus in suo tractatu de usuris, ubi num. 10. audacter affirmat usuram non esse prohibitam nisi in quantum est contra charitatem. Eandem pravam opinionem amplexatus, alia ratione defendit Claudius Salmasius in duplici tractatu, altero inscripto de usuris, altero de trapezitico foenore, quibus in locis usuram, nisi charitatem laedat, ab omni culpa absolvit, eo quod sit merces locatae pecuniae. Impiae Calvini et Molinaei opinioni non veriti sunt subscribere pauci quidam Doctores catholici: illi scilicet, qui, quum agitur de mutuo quo pecunia aliave res datur ad negotiationem, a foenoris labe excusant lucrum quod ex mutuo percipitur, dummodo sit moderatum, modumque servet a patriae legibus definitum. Porro, etsi Benedictus XIV. in *Synodo dioecessana* solum loquatur ut privatus doctor, ipse tamen sine dubio omnium optime sciebat quid in sua encyclica reprobare voluisset: adeoque quidquid circa usuram postea scripsit in *Synodo*, et signanter citato cap. IV. ubi n. 10. doctrinam in encyclica definitam summam refert, habendum est tamquam eiusdem encyclicae explicatio, a qua recedere piaculum sit.

Theologi vero, qui tuentur secundam sententiam, dicunt auctarium illud non percipi ex mutuo ipsius ratione mutui, vel solius causa mutui, vel vi mutui ipsius, vel praecise ratione mutui, hoc est lucri cessantis, damni emergentis, aliave extrinseco titulo remoto; quod veluti usurarium atque omni iure illicitum meritissime reprobavit Benedictus XIV. tum in encyclica §. 5. num. 1. et 2., tum citato loco *de Synodo* num. 11., sed ratione, causa, vi, ac titulo extrinseco legis civilis dominium auctarii ex mutuuario in mutuante transferentis, eo modo quo rerum dominium ex uno in alium transfertur per legitimam praescriptionem: vel ratione publici boni, quod, mutatis circumstantiis, in praesenti rerum statu, absque illo auctario, vix aut ne vix quidem obtineri posset: vel ratione ultronei taciti ac mutui consensus in auctarium a lege permissum ex parte totius generatim Societatis, cui inest ius dispo-

nendi de rebus suis prout et libuerit, et speciatim ex parte eorum, qui modo pecunia abundant et modo indigent, ac modo pecuniam mutuo dant, modo vero accipiunt: vel *ratione consuetudinis* in orbe catholico fere ubique receptae, etiam apud homines timoratae conscientiae, auctarium moderatum et a patriae legibus definitum exigendi: vel ob alias huiusmodi causas, quas Benedict. XIV. nullibi expendit aut memoravit. Ad argumentum autem quod ex encyclica et ex opere *de Synodo dioecessana* deducunt primae sententiae patroni, quadrupliciter respondent.

Respondent 1. Benedictum XIV. in encyclica *Vix pervenit* hoc unum statuisse, tunc scilicet ex mutuo nullum auctarium, etiam moderatum, ultra sortem recipi posse, cum quis vel tenetur simplici ac nudo mutuo absque ullo auctario alteri succurrere, quod ex praecepto charitatis, ex eoque solo, locum habet in multis casibus, idque ex eo quod tunc nullus cum mutuo concurrere potest legitimus titulus aliquid supra sortem exigendi; vel mutuum dat in iis casibus, in quibus nullum alium iustum contractum praeter unum mutuum celebrare potest; quod etiam accidit in multis circumstantiis, verbi gratia quum alteri credit vinum, oleum, etc., ut patet ex §. 3. num. 3., ubi postquam definivit falso et temere affirmari, reperiri semper ac praesto ubique esse vel una cum mutuo titulos alios legitimos, vel, secluso etiam mutuo, contractus alios iustos, quorum vel titulorum vel contractuum praesidio, quotiescumque pecunia, frumentum, aliudve id generis alteri cuicumque creditur, toties semper liceat auctarium moderatum ultra sortem integrum salvamque recipere; *eumque qui ita affirmaret* non modo divinis documentis et catholicae Ecclesiae de usura iudicio, sed ipsi etiam humano communi sensui ac naturali rationi procul dubio adversari; huius definitionis rationem reddit, et concludit his notabilibus verbis: *Neminem enim id saltem latere potest, quod multis in casibus tenetur homo simplici ac nudo mutuo alteri succurrere, ipso praesertim Christo Domino edocente: Volenti mutuari a te ne avertaris: et quod simpliciter multis in circumstantiis, praeter unum mutuum, alteri nulli vero iustoque contractui locus esse possit: ac proinde iuxta Benedictum XIV. quoties mutuo datur pecunia, et praeceptum charitatis non obligat ad eam mutuandam simplici ac nudo mutuo, semper una cum mutuo reperiri posse, quin imo praesto ubique esse legitimum aliquem titulum verbi gratia legem civilem, publicum bonum, etc., cuius praesidio liceat auctarium moderatum ultra sortem recipere, iuxta tritam illam regulam: In necessariis expressio unius est exclusio alterius, aut saltem Benedictum XIV. huic sententiae nullatenus adversari.*

Respondent 2., huic quoque sententiae nullatenus adversari Benedictum XIV. in iis quae circa usuram scripsit citato cap. IV. *de Synodo* num. 2. et 3., quia ibi solum docet, perpetuae Catholicae Ecclesiae de usura doctrinae post Graecos schismaticos contradixisse tum Calvinum, qui erronee docebat aliquod moderatum lucrum ex mutuo *praecise ratione mutui* (in quo sita est usurae essentia) licite a divitibus exigi posse: tum Carolum Molinaeum, qui audacter affirmabat huiusmodi *usuram* a Calvino admissam, et suapte natura malam, non esse prohibitam, nisi in quantum est contra charitatem; tum Claudium Salmasium, qui eandem *usuram* nisi charitatem laederet, ab omni culpa prave absolvebat, falso eo praetextu, quod sit merces locatae pecuniae; tum demum paucos quosdam Doctores illos catholicos, qui, impiae Calvini et Molinaei opinioni *subscribere* non verentes, una cum ipsis audacter affirmabant et erronee docebant, *usuram non esse prohibitam nisi in quantum est contra charitatem*, atque a foenoris labe excusari lucrum quod a negotiatoribus exigitur percipiturque ex mutuo *praecise ratione mutui*, dummodo sit moderatum, modumque servet a patriae legibus definitum. Haec omnia profecto ne latum quidem unguem differunt a doctrina, quae continetur in Encyclica. At vero aliud est usurarium et illicitum esse auctarium, etiam moderatum et a patriae legibus definitum, quod percipitur ex mutuo *praecise ratione mutui*; aliud est usurarium ac illicitum esse moderatum illud aucta-

rium a patriae legibus definitum, quod percipitur ex mutuo non *praecise ratione mutui*, sed *ratione legis civilis*, vel ob extrinsecas alias causas paulo supra commemoratas: primum affirmat Benedictus XIV., de altero ne verbum quidem facit.

Respondent 5., in hypothesi quod Benedictus XIV. in *Synodo* huic sententiae reipsa adversaretur, nullo modo culpandum fore, qui solidis rationibus innixus, a privata eius opinione seu explicatione modeste recederet, quum ille ipse in fine praefationis ad *Synodum dioecesanam* aperte profiteatur, *omnibus in rebus, quibus nullum ex publica Ecclesiae auctoritate pondus accessit*, qualis procul dubio est explicatio de qua agitur, *nihil se in Synodo definire ac veluti decretorium exhibere velle*, allata etiam ad hoc comprobandum auctoritate Melchioris Cani, et exemplo Innocentii IV., qui, etsi commentaria sua in libros decretalium scripserit quum summum pontificatum gereret, non tamen « hoc sibi unquam arrogavit, ut, quidquid in eo opere scripsisset, pro » re definita haberetur, sed facile passus est opiniones suas, quas tamquam » privatus doctor proposuerat, ab aliis doctoribus oppugnari, ut patet, etc. ».

Respondent 4., in hypothesi quoque quod Benedictus XIV. huic sententiae adversaretur in Encyclica, iam inde nullum amplius argumentum peti posse ad reprobandum moderatum illud auctarium a lege permissum, quod percipitur in praesenti rerum statu: quia circumstantiarum mutatio aliquam induere potuit, imo vero manifestam induxit variationem, non quidem quoad principia quibus nititur catholicae Ecclesiae de usura et mutuo doctrina, quaeque eadem semper ac omnino invariabilia sunt, sed quoad eorum applicationem.

Ego, diligenter considerata, prout tenues ingenii mei vires ferunt, Benedicti doctrina, ut moderatius, sic probabilius illud existimo: dubitari merito posse, utrum ea doctrina, ex se sola, huic controversiae dirimendae sufficiat necne. Verum cum, etiam posita hac mea opinione, cui parum fidere debeo, incertum adhuc remaneat, num auctarium illud tuta conscientia recipi possit; ut sublata omni incertitudine sit mihi parata facultas apte respondendi quibusdam Confessariis, qui novissime circa eandem controversiam me consuluerunt, tum et aliis qui ratione numerum quibus perfungor, sive intra sive extra sacrum Poenitentiae tribunal consulturi sunt; vestram Eminentiam suppliciter rogo obtestorque in Domino, ut mihi transmittat resolutionem trium quaestionum, quas hic subiicio:

I. An auctarium, de quo agitur, licitum sit. Et quatenus haec quaestio ex doctrina Benedicti XIV. aliisque Sedis apostolicae iudiciis directe resolvi nequeat, II. An poenitentes, qui auctarium illud sive dubia aut mala fide receperunt, sacramentaliter absolvi possint, nulla facta aut promissa hic et nunc restitutione, dummodo serio promittant se esse paratos ad exequendum quidquid super hoc negotio Sedes apostolica determinaverit. Et quatenus affirmative, prout asserunt nonnulli, ad hanc aliasque similes quaestiones iam pluries nomine sancti Officii et Sedis apostolicae provisorie rescriptum fuisse, de quibus tamen rescriptis eorumque tenore mihi non constat, III. An iis pariter, qui neque ullum habent titulum lucri cessantis vel damni emergentis vel periculi extraordinarii sortis amittendae, neque versantur in casibus, in quibus praeceptum charitatis erga proximum eos obligat ad mutuandum simplici ac nudo mutuo, liceat pecuniam mutuo dare, stipulato aut convento annuo auctario 5. pro 100. supra sortem prout lex regia permittit, sub eadem conditione de parendo futuris Sedis apostolicae super hoc negotio determinationibus.

Maxima fretus fiducia, quod Eminentia vestra votis meis, in re mihi adeo necessaria, benigne obsecundabit, sum eroque semper, Pineroli, die 22. Ianuarii 1852. Eminentiae vestrae Humillimus, obsequentiss. et deditiss. Servus Ioseph Antonius Avvaro S. Theol. Doctor, et regius eiusdem facultatis Professor, Canonicus Theologus, et Provicar. generalis.

Sacra Poenitentiarum dilecto in Christo Iosepho Antonio Avvaro transmittendas censuit resolutiones alias datas ad quaedam dubia circa usuras,

scilicet: *(sunt autem cae omnino, quas superius attulimus, num. V.) Datum Romae, in S. Poenitentiarum, die 11. Februarii 1852. E. Card. De Gregorio Maior Poenitentiar. D. Fratellini S. Poenitentiar. Secretar. »*

To the question of the Bishop of Nicaea from the Sacred Roman and Universal Inquisition: "Most Blessed Father. In the volumes titled 'Annali delle scienze religiose', vol. 1, no. 1, page 128, and 'l'Ami de la Religion', April 2, 1835, no. 2436, a response is

read which the most eminent Cardinal Major Penitentiary gave on March 7, 1833, to the most illustrious and reverend Bishop of Viviers on the question he raised about usury. The prelate had explained that some preachers of God's word teach in public sermons that it is lawful to derive profit from a loan by virtue of civil law, without mentioning that condition recently set forth by the Sacred Penitentiary, which provides that penitents who receive profit from a loan by virtue of civil law must be ready to adhere to the commands of the Holy See. He therefore asked whether such priests should be disapproved of.

In response to his requests, the most eminent Major Penitentiary said that the Sacred Penitentiary had no intention with those answers to define the question debated by theologians concerning the title derived from the prince's law, but only to set forth a standard which confessors might safely follow with penitents who in good faith received a moderate profit established by the prince's law, and who were ready to adhere to the commands of the Holy See. Consequently, the way of acting of those preachers who teach in sacred sermons that it is lawful to derive profit from a loan by virtue of civil law, without mentioning the stated conditions, cannot be approved in any way.

Some, focusing on the words 'in good faith' used in the response, argue that, according to the standard proposed several times by the Sacred Penitentiary to confessors, only those who received the stated profit in good faith can be absolved sacramentally, with no burden of restitution imposed. Others, on the other hand, assert that even those who received the said profit in doubt or bad faith can be absolved, with no burden of restitution imposed, provided they are ready to adhere to the commands of the Holy See. And, they say, this clause 'in good faith' does not regard the burden of restitution, but rather the honesty of the agent and the absolution which confessors cannot grant to penitents established in bad faith unless they first repent of having committed a sin in bad faith. They infer this from the very request of the Bishop of Viviers. The Bishop did not ask, they say, whether penitents established in doubt or bad faith were obliged to make restitution, but only whether those preachers who preached the lawful use of the said loan without mentioning any condition should be disapproved of. Since the Holy See has not yet defined the question, and a sin committed in bad faith, even if it does not of itself entail the burden of restitution, always induces guilt; they say that the Most Eminent disapproved of the way of acting of those who preached the lawful use of the said loan absolutely, without mentioning the conditions of acting in good faith and of adhering to the commands of the Holy See, without speaking of the obligation of restitution, about which the prelate did not ask. They also infer from the condition required by the Sacred Penitentiary in penitents of adhering to the commands of the Holy See, which disposition necessarily presupposes or raises doubt about the honesty of the said loan.

Since on both sides there are men of the greatest piety and authority not to be despised, so that souls may be provided with peace in such a frequent and serious matter, it is most humbly requested: Whether penitents, who received a moderate profit from a loan by virtue of law in DOUBT or BAD FAITH, can be sacramentally absolved with no burden of restitution imposed, provided they sincerely repent of the sin committed because of doubt or bad faith, and are ready in filial obedience to adhere to the commands of the Holy See. Nicaea, September 9, 1837. The undersigned, Dominic, Bishop of Nicaea.

On Wednesday, January 17, 1838, in the General Congregation of the Sacred Roman and Universal Inquisition held in the Convent of Santa Maria sopra Minerva in the presence of the most eminent and most reverend Lords, Cardinals of the Holy Roman Church, General Inquisitors against heretical depravity, having proposed the aforementioned doubt, the same most eminent and most reverend Lords said: Affirmatively, provided they are ready to adhere to the commands of the Holy See. Angelus Argenti, Notary of the Sacred Roman and Universal Inquisition.

IX.

S. Romanae et universalis Inquisitionis ad dubium Episcopi Nicaeensis. « *Beatissime Pater.* In fasciculis quorum titulus *Annali delle scienze religiose*, vol. 1. num. 1. pag. 128., et *l'Ami de la Religion*, 2. Avril 1835. num 2436., legitur responsum quod eminentissimus Cardinalis Poenitentiarius maior dedit die 7. martii 1835. illustrissimo ac reverendissimo Episcopo Vivariensi in quaestione ab ipso circa usuram proposita. Exposuerat enim Praesul, nonnullos verbi Dei praecones docere in publicis concionibus licitum esse lucrum ex mutuo percipere titulo legis civilis, quin ullum verbum facerent *de illa conditione*, responsis a sacra Poenitentiaria nuper latis apposita, qua cautum est, ut poenitentes lucrum ex mutuo legis civilis titulo percipientes *parati* esse debeant stare mandatis sanctae Sedis: ac postulaverat, an illi sacerdotes essent improbandi.

Cuius precibus benigne annuens eminentissimus Poenitentiarius maior respondit, sacram Poenitentiariam haudquaquam voluisse responsis illis quaestione a Theologis agitatam de titulo ex lege principis desumpto definire, sed solummodo normam proposuisse, quam Confessarii tuto sequerentur erga poenitentes, qui moderatum lucrum lege principis statutum acciperent bona fide, paratique essent stare mandatis sanctae Sedis: ac proinde minime probari posse illorum concionatorum agendi rationem, qui absolute docent in sacris concionibus licitum esse lucrum ex mutuo percipere titulo legis civilis, reticitis enunciatis conditionibus.

Quidam attendentes ad illa verba in responso apposita *bona fide*, continent iuxta normam a sacra Poenitentiaria Confessariis pluries propositam, illos tantum sacramentaliter absolvi posse, nullo imposito restitutionis onere, qui lucrum enuntiatum bona fide percepissent. Alii e contra asserunt, etiam illos, qui dubia vel mala fide dictum lucrum percepissent, absolvi posse, nullo imposito restitutionis onere, dummodo parati sint standi mandatis sanctae Sedis: et, ut aiunt, hanc clausulam *bona fide* non respicere onus restitutionis, sed potius honestatem agentis et absolutionem, quam Confessarii impertiri nequeunt poenitentibus in mala fide constitutis, nisi prius de patrato in mala fide poeniteant: et hoc deducunt ex ipsa postulatione Episcopi Vivariensis. Non petierat Episcopus, aiunt, utrum poenitentes dubia vel mala fide constituti obligandi essent ad restitutionem, sed tantum utrum improbandi essent concionatores illi, qui, nulla enunciata conditione, licitum usum mutui praedicti praedicabant: quumque sancta Sedes nondum quaestionem definierit, et patratum in mala fide, licet per se non inducat onus restitutionis, semper tamen inducat culpae reatum; hinc Eminentissimum improbasse aiunt istorum agendi rationem, qui, reticitis conditionibus *bona fide* et *standi mandatis sanctae Sedis*, licitum usum dicti mutui absolute praedicabant, quin loqueretur Eminentissimus de obligatione restitutionis, de qua non postulabat Praesul. Deducunt quoque ex conditione a sacra Poenitentiaria requisita in poenitentibus standi mandatis sanctae Sedis, quae dispositio dubium necessario aut supponit aut excitat de honestate mutui praedicti.

Quumque hinc et inde sint viri summae pietatis et non spernendae auctoritatis; hinc ut animarum quieti in re tam frequenti et seria provideatur, perhumillime petitur: *An poenitentes, qui moderatum lucrum solo legis titulo ex mutuo DUBIA vel MALA FIDE perceperunt, absolvi sacramentaliter possint nullo imposito restitutionis onere, dummodo de patrato ob dubiam vel malam fidem peccato sincere doleant, et filiali obedientia parati sint standi mandatis sanctae Sedis.* Nicaeae 9. Septembris 1837. Subscriptus † Dominicus Episc. Nicaeensis.

Feria IV. die 17. Ianuarii 1838. In Congregatione Generali sanctae romanae et universalis Inquisitionis habita in Conventu sanctae Mariae supra Minervam coram eminentissimis et reverendissimis Dominis sanctae romanae Ecclesiae Cardinalibus contra haereticam pravitatem Generalibus Inquisitoribus, proposito supradicto dubio, iidem eminentissimi et reverendissimi Domini dixerunt: *Affirmative, dummodo parati sint stare mandatis sanctae Sedis.* Angelus Argentii S. Romanae et universalis Inquisit. Notarius. »

Loco † sigilli.

S. Congr. S.O. on the day of March 26, 1840, with the question proposed, whether N.N., whose father had lent a large sum of money with a profit of ten percent, in line with the legal rate of that time, is obliged to return something; and to the extent that he is

liable for restitution, whether he may lawfully retain at least five percent, the response was: Regarding usury in general, consult the decrees already issued. Regarding the excessiveness of the profits, consult the Most Reverend Bishop, who should consider the circumstances of the case, and the practice of that time which prevailed among men of conscientious fear, and provide accordingly.

X.

S. Congr. S. O. sub die 26. Mart. 1840., proposito dubio, *an ad aliquid reddendum teneatur N. N. cuius Pater magnam pecuniae summam mutuo dederat cum lucro decem pro centum, legali taxae illius temporis respondente; et quatenus restitutioni esset obnoxius, utrum saltem quinque pro centum retinere licite valeat*, rescriptum fuit: *Quoad usuras in genere, consulat decreta iam lata. Quoad excessivitatem fructuum, consulat R. P. D. Episcopum, qui expendat facti circumstantias, et praxim illius temporis, quae vigeat apud viros timoratae conscientiae, et provideat.*

After a year had passed in 1871, a query came from a certain place in Italy:

1. Is it permissible today, even for the clergy, to place money with a moderate profit, as allowed by the law previously under the legitimate government, at five percent?
2. Should those pious places, nuns, and monasteries that today receive a profit from their capital at six percent be disturbed, given that today it is given and received in the common course?

The Sacred Congregation of the Holy Office on the day of February 28, 1872, responded to both questions: In accordance with other answers given, provided they are ready to adhere to the mandates of the Holy See, they should not be disturbed.

XI.

Cum demum elapso anno 1871. ex quodam Italiae loco quaesitum fuerit: *1. Se sia lecito oggi, eziandio agli Ecclesiastici, di collocare il danaro col frutto moderato, come permetteva la legge precedentemente sotto il legittimo governo, del cinque per cento? 2. Se oggi sieno da inquietarsi quei Luoghi pii, Monache e Monasteri, che ricevono il frutto del loro capitale del sei per cento, stantechè oggi si dà e si riceve nell' andamento comune?*

S. Congr. S. O. sub die 28. Febr. 1872. respondit ad utrumque: *Iuxta responsiones alias datas, dummodo sint parati stare mandatis S. Sedis, non esse inquietandos.*

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Dominic Prummer – Manual of Moral Theology – chatGPT Translation

Posted on [October 27, 2023](#)

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Of loans and usury,

Preliminary note. The doctrine of loans and usury today presents almost no practical difficulty for the confessor. Therefore, we briefly discuss this matter, hinting at the summary points of this doctrine. Countless works have been written on loans and

usury. Among modern moralists, Tanqueray has dealt most sufficiently with this matter.

A loan is a contract by which ownership of a thing, consumable and fungible at first use, is transferred to another with the obligation that a thing of the same value be returned in due time.

It is said: “of a thing consumable and fungible at first use” to distinguish a loan from a loan for use (*commodatum*) and a lease, in which non-consumable things are given with the obligation of returning the same thing individually. A loan is also distinguished from a deposit and other contracts enumerated in the preceding paragraph for the same reason, and furthermore because the loaned thing in its individual form immediately passes into the ownership of the recipient, which does not happen in the contracts of loan for use (*commodatum*), deposit, etc.

The object of a loan is something consumable and fungible at first use, e.g., wine, oil, and especially money. However, any such thing is unfruitful in itself. Some things can bear fruit: 1. naturally, as a tree produces fruits; 2. artificially or industrially, as a merchant buys goods with money, and makes a profit from their sale; 3. civilly, as a rented house yields a rental price. Cf. above n. 208.

Usury is defined by St. Thomas: “The taking of a price for the use of a loaned thing” or, considered objectively: “The price of the use of a loaned thing”. The Fifth Lateran Council, session 10, further explains this definition: “This is the proper interpretation of usury when, from the use of something that does not grow, without labor, without expense, and without risk, profit and offspring are sought.” Therefore, the essence of usury consists in the acceptance of profit from a mere loan. If profit is taken for another extrinsic reason, e.g., emerging damage, risk, etc., it is not usury. Likewise, it is not usury if profit is indeed taken from the loan, but on a gratuitous and non-onerous title.

Although according to the force of the name, usury and interest are not distinguished, however, for clarity’s sake, it is better that usury is always taken in a bad sense; while interest (or premium) in a good sense. Usury, therefore, is either profit from a mere loan, or excessive profit taken from a loaned sum, e.g., 30%. Interest, however, is profit lawfully taken from a loan. Interest is distinguished as legal, which is determined by the law of the land; or common, which is established by common use in some business; or conventional, which is determined by the agreement of the lender and borrower. Legal and common interest is considered just. However, conventional interest is not just unless, considering the circumstances of places, times, and persons, it corresponds to the loss and risk that the lender must bear. Another more precise measure cannot be given for the amount of interest. The Sacred Penitentiary on April 18, 1889, responded to the question of whether it is lawful to take 8 or 10% interest: “Since it is risky to set a rate for the fruits of money, the Venerable Father in Christ, the Bishop petitioner, should decide each case according to the common practice observed by men of conscientious fear in respective places and times.” I think in our times under ordinary conditions, interest exceeding 20% is usurious and unjust because it far exceeds the amount established in public monetary institutions (commonly Banks). However, I do not wish to condemn the actions of industrial companies, which give

30% or even 50% annually, because such a premium is not properly called interest, but the fruit of business transactions. Usury, taken in this bad sense, is also severely punished by civil codes and entails an obligation of restitution.

Principle. Properly called usury is against divine positive law, ecclesiastical law, and natural law.

This is the most common opinion, which Benedict XIV in his book “De syn. dioec.” calls the doctrine of the Catholic Church, and to which only D’Annibale almost alone contradicted with these words: “It is not clear by any manifest or natural or divine law that usury is illicit or otherwise forbidden. Rather, from the way the Catholic Church acts, the opposite is inferred.”

Proof 1. It is against divine positive law. From many texts of Holy Scripture, we choose only two. It is said in Psalm 14: “Lord, who will dwell in your tabernacle?” Among others is enumerated: “He who has not given his money on usury.” Therefore, usury excludes from heaven. In the Gospel, it is said, “Lend, expecting nothing in return.” For the sense of this place, see Billuart.

Proof 2. It is against ecclesiastical law. There are five ecumenical councils that prohibited usury, namely, the Lateran Councils III, IV, V; the Council of Lyon II; and the Council of Vienne. Likewise, Sixtus V condemned the “whirlpool of usury, odious to God and men, condemned by the sacred canons and contrary to Christian charity.” Alexander VII proscribed the proposition (42): “It is lawful for the lender to demand something beyond the principal, if he obliges himself not to demand the principal back for a certain time.” Cf. also propositions 41 and 42 condemned on March 2, 1697, by Innocent XI. Especially, Benedict XIV in his encyclical “Vix pervenit” on Nov. 1, 1745, established a certain doctrine on usury. The same doctrine is also proposed by the Code of Canon Law, c. 1543.

Proof 3. It is against natural law. Hence, St. Thomas says: “To take usury for money lent is intrinsically unjust”; he proves this thesis in this way: It is against justice, and therefore against natural law, to sell what does not exist, or to sell the same thing twice. But the usurer does this. Therefore, he sins against justice and natural law, and consequently, he is bound to restitution. The major premise is clear. Proof of the Minor: In fungible things and those consumable at first use, which are the proper object of usury, the things themselves and their use are morally the same. Therefore, just as it would be utterly ridiculous and unjust if a merchant, after selling wine at a fair price, would want to additionally sell the use or consumption of the wine, it would be similarly unjust if someone were to demand something in addition to the wine loaned for the use of that wine. Moreover, money, which is the primary subject of usury, clearly is not morally distinguished from its use. Therefore, nothing can be demanded for the use of loaned money, and if something has nonetheless been accepted, it must be returned. Beautifully, St. Leo the Great says: “Interest on money is the death of the soul.”

Extrinsic reasons justifying interest. Even though usury is never lawful, and a loan, properly so-called, must always be gratuitous, there exist extrinsic reasons, on account of which an addition or interest can be demanded in a loan contract. St. Thomas

already enumerates such reasons, and Benedict XIV expressly teaches this. Four reasons or titles are typically listed: 1. risk of the loan, 2. conventional penalty, 3. lost profit or emergent damage, 4. civil law or legal premium.

1. Risk of the loan is a special (not general) risk, prudently feared, that the lender will not recover his property. Such a special risk often exists, especially if one commits his money to certain financial institutions or less secure debtors. It's clear that due to such risk, some interest can be taken. For a thing owned without risk is valued more than the same thing at risk.
2. The conventional penalty is established for the case where the borrower, due to culpable delay, postpones the repayment of the loan beyond the stipulated time. For this reason to be sufficient and just, it is required that the imposed penalty be moderate and the delay in payment truly culpable.
3. Emergent damage and lost profit. Lost profit is the absence of some profit closely hoped for, which the lender would certainly have had if he had allocated the loaned money to obvious other uses. However, emergent damage is the positive detriment that the lender must undergo due to the loan contract. That these reasons suffice to demand proportionate interest in a loan is clear in itself and is admitted by all today.
4. Legal premium or civil law. Since the 16th century, there has been a heated debate about whether civil law can, in the absence of other titles, make usury lawful. Today, this dispute seems to be settled. Indeed, to the question: "Whether penitents, who have taken moderate profit from a loan in doubt or bad faith solely on the title of the law, can be sacramentally absolved, with no obligation imposed for restitution, provided they sincerely regret the sin committed due to doubt or bad faith, and are prepared in filial obedience to adhere to the mandates of the Holy See," the Sacred Office responded on Jan. 17, 1838: "Affirmatively, provided they are prepared to adhere to the mandates of the Holy See."

14 Aug. 1831; 11 Nov. 1831; 11 Feb. 1832; 23 Nov. 1832. The Sacred Congregation for the Propagation of the Faith, gathering almost all the resolutions of the Holy Congregations issued up to the year 1873, concludes in these words: "Even if other titles are lacking... the title of civil law alone can be considered sufficient in practice, both by the faithful and by their confessors, who therefore cannot disturb their penitents about this matter, as long as this question is pending before a judge, and until the Holy See has explicitly defined it." The Code of Canon Law, c. 1543, establishes the same: "In the provision of a fungible thing, it is not per se illicit to agree on a legal profit, unless it is clearly immoderate, or even on a greater profit, if a just and proportionate title supports it."

The reason is that the supreme legislator, by the power of high dominion and for the sake of the common good, has the right to transfer ownership of this profit from the borrower to the lender, especially since the subjects willingly consent. Indeed, in modern times, trade would be impossible, and the public good would be seriously harmed if moderate profit or interest were not allowed.

Other authors have argued differently, thinking that moderate interest is lawful even without external legitimizing titles. Indeed, in modern times, profit or interest is almost exclusively demanded and received for borrowed money. Furthermore, money today is not entirely sterile but is truly quasi-fruitful. Surely, money does not produce money, just as a cow produces a calf; but just as a rented house produces profit, so does borrowed money. Moreover, money today is the primary instrument of trade and can immediately and without difficulty be converted into fruitful things. Hence, a contract in which money is transferred to another under the condition of legitimate interest is no longer a proper loan or usury, in which a sterile thing is transferred, but a contract of its own kind. Therefore, the very grave prohibitions issued against usury can no longer apply to borrowed money. Whether this opinion is true is not clear. Although money today can be much more easily converted into fruitful things than in ancient times, it still does not follow that it has changed its nature and has become fruitful of itself.

For practice. Everyone (whether clerics or laypeople) can in good conscience receive moderate interest, even compound interest or interest on interest from borrowed money, so that there is never an obligation to return such received interest. For today, there are always the external titles mentioned above. However, what constitutes moderate interest depends on the risk of the loan, the lost profit, and the emerging damage. Therefore, in regions where there is a legal rate or accepted custom, this should be adhered to. Indeed, more can be taken if the money is given to those companies commonly called “Aktiengesellschaften” (stock companies) or “sociétés par actions” (shareholder companies). However, it is never permissible to exploit the borrower’s need to extract immoderate interest, as this would harm both justice and charity.

Scholion 1. On montes pietatis, savings banks, and money tables.

A “mons pietatis” is a collection of money or other loanable things gathered so that the poor, by providing collateral and moderate interest, can borrow from it what they need. Today they are called “Pfandhäuser” (pawnshops), pawnshop, “mont de piété”. The montes pietatis (first established in Orvieto [1463] or Perugia [1467]) were approved by the Fifth Lateran Council and the Council of Trent. At that time, they were to alleviate the poor, as only very moderate interest was demanded; now, however, as these pawnshops have often been transferred to private individuals, and as the demanded interest is often excessive, for various reasons, these pawnshops are sometimes rather mountains of iniquity. It is highly desirable that the government carefully observe and control such institutions.

Savings banks (“Sparkasse”, “caisse d’épargne”, savings bank) are established either by municipalities or by private individuals to receive money (not of a large amount) and to pay suitable interest for the money received. The purpose of these institutions is to promote thrift, especially among people of moderate means; this is certainly excellent. It is permissible to put money in these savings banks, as the Sacred Penitentiary expressly declared on February 25, 1836.

Banks (Bank, banque, bank) exist everywhere in the world and greatly serve various types of commerce. However, as experience proves, they can also cause considerable

inconveniences and damages. Since it often happens that a priest, especially if he is a parish priest, has to manage money, or his advice is sought in financial matters, it will be very useful if he tries to understand the different types of banks. According to modern practice, everyone (including priests) can place money in these banks and buy both “shares” and “bonds”, as long as they avoid scandal, cooperation with evil, and proper stock market speculations. Whether money belonging to churches and other pious causes can be placed in savings banks or banks depends both on the condition of these institutions and on particular ecclesiastical statutes.

Scholion 2. On the contract of census. The census (Rente) is the right to receive an annual pension from a thing or person. This annual pension was called a canon, income. The reserved census was distinguished (arising from the delivery of immovable property); the consignative or simply said census (purchased from the delivery of some “capital”), e.g., I give you 10,000 francs on the condition that I receive 800 francs annually until death; the real census, which is almost like a servitude imposed on some property and is almost the same as emphyteusis, e.g., I give you these fields, so that you and your heirs pay me 100 francs annually from their fruits. — There are other divisions, such as personal census, monetary census, fruit-bearing census, redeemable census, irredeemable, etc. Whatever the ancient laws, today the census is lawful, as long as there is a just proportion between the census and the price. For the census is like interest. Moreover, today interest or a loan is lawful, as long as it is moderate.

Some Footnotes:

113. Ancient authors debated very subtly about these two titles of loans [**damnum emergens and lucrum cessans**]. See Cajetan, Commentary on 2-2, q. 78, a. 2. In fact, some doubted whether St. Thomas accepts foregone profit as a sufficient title for a loan. Today, these debates are of little practical use, as in the lending of money there are always sufficient titles for moderate interest. Billuart discusses each title of interest excellently in “De contract. diss. 4, a. 5”. D’Annibale (Summula theol. mor. II, n. 531) completely without merit cites St. Thomas (De malo q. 13, a. 4 ad 14), as if not even emergent damage were a sufficient title for taking interest.

118. When in ancient times severe penalties were established against any form of usury, some tried to evade these penalties by entering into a disguised form of usury through a tripartite contract or a “Mohatra” contract. The tripartite contract consists of one partnership agreement and two insurance contracts. For example, Peter asks Paul for 10,000 francs to conduct a business, promising him a share of the profit, i.e., 1,000 francs. This is the partnership contract. Peter and Paul conduct the business, in which Paul provides the money and Peter provides the labor. After this contract is made, Paul, fearing the risk, offers Peter 300 francs to insure the principal. This is the first insurance contract. Moreover, Paul, fearing the loss, offers Peter another 200 francs to also insure the profit; which is agreed upon. This is the second insurance contract, completing the tripartite contract. Therefore, Paul receives 500 francs or 5% for the 10,000 francs lent; cf. Sixtus V’s Constitution “Detestable Greed” 1586.

Mohatra is a type of purchase to disguise usury. Here’s an example: Peter asks Paul for 1,000 francs. Paul replies that he cannot lend this money either freely or with interest, as it is heavily prohibited; but he proposes this method of action: “I sell you my horse for 1,100 fr., and you give me a promissory note, in which you promise to pay this sum after a year. Immediately, you sell the horse back to me for 1,000 fr., which I give to

you.” Therefore, Peter has the 1,000 francs he asked for, but after a year, he must pay 1,100 francs or 10% for the borrowed money. Innocent XI on March 2, 1679, condemned the proposition (40): “The Mohatra contract is lawful, even with respect to the same person and with a prior contract of resale made with the intention of profit” (Denzinger n. 1190).

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Cajetan – Summula Peccatorum – ChatGPT-4 Translation

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Usury is the profit derived from a loan.

1. It exists because either the same thing is sold twice, or what does not exist is sold: that is, either money is sold twice, once for the principal and again for the profit, or the use of money, which does not exist beyond the money itself, is sold. Hence, it is a mortal sin, especially against the charity of justice.
2. And because usury is distinguished into only mental usury and external usury, and the sin of usury inherently is a sin consisting in an external act, since it is an injustice to another, it is therefore necessary to discuss both. But first about the external usury which consists in profiting from a loan, with an intervening agreement, whether explicit or implicit.
3. Note firstly that for usurious gain, two conditions are both required and sufficient concerning the profit itself. The first is that it is something assessable in money. The second is that it is not one's own. Hence, based on these conditions, the rationale and explanation for many cases are given.
4. The first is: If someone lends with the intention that the borrower becomes his friend, it is not usury, because friendship cannot be assessed in monetary value. However, no civil agreement can intervene here: because friendship is a matter to which a civil obligation is repugnant. Friendship is a spontaneous inner love: but one who is civilly obligated is subject to necessity, so that whether he wants to or not, he is bound to provide it. Hence, a civil obligation towards friendship, which cannot be assessed in monetary value, would be ridiculous.
5. The second is: If someone lends in order to reclaim what is his, held or detained in any manner by the borrower, it is not usury, because he gains nothing but recovers his own.
6. The third is: If someone lends to redeem his own distress, it is not usury, because he gains nothing that is not his, but preserves what is his: for instance, if someone lends to someone threatening him or his loved ones; and thereby frees himself from many expenses that he would have to incur for his own protection: and the same goes for any other redemption of his distress.

7. The fourth case is: If someone, from lending, incurs a loss and stipulates in the agreement to be compensated beyond the principal for the loss that arises from the loan. For instance, if he received it under usurious terms to lend to someone, or if he sells his property for less than its worth to have the money to lend to someone; and similar situations. In fact, no usury occurs here because there's no profit from the loan, but only the avoidance of personal loss: for it is fitting for the lender to keep himself unharmed, especially in regard to emerging damages.
8. The fifth case pertains to the loss of expected profits. If someone, intending to invest money in an immediate business opportunity but in truth, lends it out of charity to meet the pressing needs of another, and stipulates in the agreement to be compensated for the loss of potential profit beyond the principal; it is not usury, provided two conditions are met. The first is that the lender is genuinely prevented from making a profit due to this loan, which isn't the case when the lender has other money that he can lend: because if he has other money, he isn't prevented from profiting by the loan. The second is: that not all the anticipated profit from that business venture is stipulated in the agreement, because potential profit isn't yet realized and can be obstructed in many ways: thus, it's not as valuable as if it were actualized. Therefore, if the entire anticipated profit were to be compensated, it would be more than what ought to be compensated. Hence, a portion of the lost expected profit can be determined at the discretion of a fair person to make the contract legitimate. About this, see in detail in our commentaries on the second part of the second question, article 2, to the first.
9. The sixth case is: If someone lends to another with the agreement that they will lend back when the first lender is in need; it is usury because that obligation, as much as it is civil, is assessable in money. Even though the borrower is morally bound to lend back when needed and able, he is not bound by a civil debt which arises from the agreement. Therefore, since this obligation is assessable in money, one cannot derive profit from the loan without usury.
10. The seventh case is: If someone lends to another on the condition that they come to grind at their mill, or to buy from their workshop, or something of this nature; it is usury because the obligation to grind at this mill, or to buy from this place, and the like, is sellable. Hence, it is not lawful to derive this kind of profit from a loan due to another's obligation.
11. The eighth is similar to the previous. If someone lends to a temporal lord with the agreement that the lord grants them the office of praetor, or some other office; it is usury because such a grant is sellable. Therefore, it is not lawful to extract profit from a loan due to such a grant.
12. However, distinguish two types of profit in these cases: One, usurious; and the other, lawful. For the usurious profit is the obligation to lend back, the obligation to grind at this mill, the obligation to buy from this workshop, the obligation to grant such an office, and the like. The lawful profit, however, is the deserved wage for the mill; the price of sold goods; the salaries and revenues of the

office, and the like. Because these profits are not from the loan but from other contracts, services, industries, labor, offices, etc.

13. Therefore, in such cases of usury, the one who lent in this manner is not held to return the wage of the mill, the price of the sold items, the salaries, and revenues of the office, and the like. But beyond repenting for the sin of usury, he is first obligated to release the bond of obligation to continue using the mill or workshop, to continue holding the office. Because such an obligation is usurious profit, and secondly, he is held to compensate for this obligation, which was sellable, even if he did not wish to sell it. It is up to the discretion of a fair person to determine how much should be returned for such an obligation, to satisfy according to the equality of justice.
14. The ninth case is: If someone lends to a lord or community with the agreement that until the loaned amount is returned, he will not pay taxes (gabels); it is usury because he derives profit from the loan by exemption from the owed tax payments. It is clear that this exemption is assessable in money, and he is held to restitution to the community or lord of the taxes for the entire retained amount that he should have paid, because it is usurious profit.
15. The tenth case is: If someone lends to another a hundred, on the condition that the borrower buys from the lender certain rights that are desperate, or useless, or barren land, or something of this sort, it is the worst kind of usury. Firstly, because the loan causes harm to the neighbor due to the bad purchase attached. Secondly, even if the items proposed for sale were very useful, it goes against the nature of the loan contract, that the borrower is civilly obligated to buy, or anything else, as previously stated.
16. The eleventh case is: If someone lends based on collateral, with the condition that he receives three for every hundred; not as profit from the loan, but as a subsidy and necessary wage for the custody of the collateral and its recovery, and other such things, it is usury. This is because, in truth, he wouldn't lend if he didn't expect these profits from the act of lending. However, from this, it does not follow that those who in good faith accept burdensome collateral and wish to keep themselves unharmed are mistaken. Just as they shouldn't become wealthier from the collateral, they also shouldn't become poorer. And just as the fruits of the collateral should be counted towards the principal, so should the expenses associated with the quality of the collateral be charged to the owner of the collateral.
17. The twelfth case is: If someone lends a thousand to a sailor, on the condition that a contract of assurance for the said thousand is made with the same lender, paying the lender so many per hundred, it is usury. It's true usury because the lender, beyond the principal, desires an obligation to undertake the contract of assurance. It's presumptive usury because the loan seems to aim for this profit. And therefore, it's condemned in the chapter "Nauiganti," concerning usury.
18. Note secondly that since usurious profit comes from a loan, therefore if someone does not lend but rather provides, rents, or sells money with an agreement to receive something more, it is not

usury. Such contracts of this kind are lawful, provided that the agreements are moderate according to the circumstances of the times, etc. Similarly, if profit arises from somewhere other than a loan. From this, clarity on several cases is provided.

19. The first case is: If someone provides money to another for display purposes (as money changers often publicly show stacks of gold coins) and wants some profit from it, it is not usury. This is because the profit does not arise from a loan, but from money provided and, in a way, rented out.
20. The second case is similar: If someone rents out gold coins to be placed in a bath or brothel, or the like, and wants a moderate profit from it, there is no usury.
21. The third case is: If someone sells gold coins in exchange for silver coins and demands a moderate profit, there is no usury. The reason for these and similar cases is that in such contracts, the money is not lent but rather provided, rented, or sold as if it were a certain item. Just as in similar cases, non-monetized gold, gems, jewelry, and other such items could lawfully be provided, rented, or sold for an honest profit.
22. 22. Quartus casus est, cum lucrum venit ex mora debitoris: ita quod potiusquam debitor non soluit tempore debito, potest creditor duo lucrari: scilicet poenam conventionalem, & aliquid pro intereffe tam damni emergentis quam lucri cessantis. Nullum fiquidem excrementum huiusmodi est vfurarium: quia non ex mutuo provenit, sed ex mora debitoris.
23. 23. Et hæc intellige, fi, & quamdiu contra voluntatem creditoris contracta est & durat mora. Nam si creditor prorogasset terminum, aut effet contentus de mora continuanda; vfura effet: quia ex mutui continuatione seu conseruatione, lucrum proveniret, & non ex mora: non enim est in mora, qui contentiente creditore moratur, sed solus qui invito creditore differt solutionem. Et hæc dicta fiint de vfura ex mutuo explicitè.

S.Thom.2.2.q.78.ar. 2. Bannes ibid. Author similiter, & tom.2.opuf.tract.8.Sotus lib.6.q.1.ar.2.6 3.Nau. cap.17.n. 211.vfque ad 213.219.cum feqq. Item in commentario de vfuris num.30. vfque ad 57. Leffius lib. 2. cap. 20. dub.7.& feqq. Medina infruct. lib.1.cap.14.§.23. Tolet. lib.5.cap.30, 32. & feqq.
a Perhaps "Equity" should be read.

b Mental usury exists when usurious profit is received or expected, yet no agreement, whether explicit or implicit, intervenes; as was previously discussed regarding Mental Simony. Exterior usury is called such when some agreement is found. This is further divided into explicit exterior and implicit or veiled exterior: specifically, it is called explicit when the intervening agreement is expressed and clear; implicit, when the agreement is silent. For example, when in some contract, whether of purchase or sale, a loan contract is also involved by interpretation, because of which some profit is received.

c Moreover, a third condition can be added: that the item, though valuable by price and not owned, is received or expected solely due to the loan contract; otherwise, if it is received or expected from the gratitude of the borrower. According to S.Th. 2.2.q.78.art.2.in c. ad 3. Hence, it is not usury if someone prefers to lend to Peter rather

than John, because he knows Peter to be more generous than John and tends to reward the benefits conferred on him. According to the Author below, c.3.n.6. It doesn't matter whether this intention of receiving something from the borrower is primary or merely secondary, as long as (as I said) it's not due to the obligation of the loan contract itself, but solely from the liberality and gratitude of the donor, that the valuable item is received or expected. This is rightly clarified by Bannes in ar.1.q.78.dub.vlt. Although such an intention may have another vice attached to it, such as stupidity, etc.

d See also Bannes in the same place, where he rightly teaches that one who voluntarily transfers his money from a business he was about to undertake to lending for his own benefit, for instance, to keep his capital safe, cannot demand anything for the lost profit. We mentioned something similar based on the same Doctor, at v. Sale letter A. at the beginning.

e If between two there is a mutual obligation to lend reciprocally, it doesn't seem to have the vice of usury, since both parties, that is, the lender and the borrower, have an equal burden of lending. For instance, John comes to Peter to borrow grain; in return, Peter needs oil, which John can lend to him. The contract doesn't seem usurious if Peter says to John: "If you want me to lend you grain, you, in turn, lend me oil." I say, the contract doesn't seem usurious, as long as, on John's side, there isn't a greater burden or difficulty, etc., in lending back than there is on Peter's side in lending in the first place. However, whether this contract might have another vice attached to it needs to be examined, depending on one's intention or purpose in making such a contract. See Bannes above, §. Subsequently. regarding the doctrine.

f Leffius believes in lib.2.c.20.dub.8.n.58 that it's not necessary that this obligation be compensated with money if, because of it, the borrower has suffered nothing.

g By this reasoning, charitable loan institutions ("montes pietatis") are excused; in which a small amount is taken from borrowers, for expenses in the preservation of pledges, and for the necessary work of servants. On this topic, see Nau. cap.

17.nu.213. Tolet.cap.38.6 39. Bannes at q.78.art.4.at the end.

h But if the lender, from the very beginning of the contract, knew that the borrower could not pay by the set date; he sinned by lending in such a manner (that is, with an attached penalty if payment was not made within a certain time). Therefore, he would be unjust if he wanted to demand that penalty later on. See Nau. cap. 17. n.215. & Leffius cap.20. dub. 15.

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Sixtus V – Detestabilis Avartia

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Pius V – In Eam

<https://archive.org/details/BR-Tomo-07/page/883/mode/2up>

Pius V – Cum Onus

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Giles of Lessines – De Usuris In Communi Ch 4 to 9 – GPT4 Translation

Posted on [October 9, 2023](#)

Chapter 4

From what has been said, it can be discerned whence the nature of the fault in this kind of usury lies. For in every human act, evil occurs either by nature or by law. By nature, when an act is done contrary to its nature and is not referred to an end fitting to nature: for the essence of good is intrinsic to all from a fitting end. By law, evil arises when it is contrary to written or infused law. In both of the aforementioned ways, evil is found in usury: for if the proper use of things is determined naturally by their nature, then the exchange of them, which is instituted for their proper use, should by its nature be referred to the same end. Therefore, if it is done contrary to the fitting end and is not referred to the end for which it exists, it will by its nature have the character of evil. But wherever the exchange of things is done for their increase and multiplication, it is done contrary to the fitting end; for where increase and multiplication are intended, a fitting end cannot exist. This is easily observed in the greedy man and the usurer, who always desires more to further increase and multiply his wealth, yet is never satisfied: the richer he is, the more he thirsts for money; and if we believe the writings of the philosophers, he lacks as much what he has as what he does not have; therefore, in amassing wealth through usury, no fitting end can be found. And in usury, it tends indefinitely: the more it acquires, the more it intends, and it takes on the character of the infinite, as the philosopher also determines in Politics I, chapter 5. For whatever things are for some end, they are finite. Since then usury signifies an excess and increase produced from the use of a thing, by its very intent and nature, it necessarily signifies what is beyond the end of natural exchange, which exists solely for the necessities of human life, which is finite in its needs. The philosopher applies this reasoning not only to usury properly called, which they call thokon, that is, the birth of money; but also to every exchange where only profit and multiplication of things are intended for the necessities of life. Of this, the philosopher speaks in Politics I, chapter 5, at the end, where he says: there are two kinds of profit-making, which he calls chrematistics; one is kalipic, that is, the augmentation of money for the sake of money itself; the other is oikonomic, that is, which serves the management of a household and city, or the common good; and this is natiocic, that is, which acquires to serve oikonomic, praiseworthy because it is finite and ordered to a fitting end according to nature; but the transference kind is justly criticized. By transference, he means another kind of exchange, through which a thing is transferred from one person to another, not for the proper use of things and the necessities of life, but solely for the sake of profit, so that wealth may always be multiplied. And because money was created for the sake of this transfer, as he says there.

The Philosopher [Aristotle] argues that the vice of this kind becomes more apparent in the exchange of currency, done for its multiplication. Consequently, it follows that this kind of transaction, which is for the accumulation of money through the exchange of money, is not according to nature. This is evident from the following point: it is an exchange from one to another because, namely, the exchange is made of money for money, and not for some other necessity of human life. Thus, this kind of exchange, termed "obolary" (where a small, determined weight of money, an obol, is given for

another of the same kind for an increase), is most reasonably detested. It is detested because through it the possession of money and its use are directed to something other than what it was naturally intended for, since it was created for the sake of exchange – that is, for the exchange of other things as they are necessary for life, not as they relate to hoarding and avarice.

Immediately, the Philosopher then turns to this kind of profit, especially as it is made through what is properly called usury, termed in Greek as “tokos,” or “birth” in Latin, because in usury, money gives birth to itself, that is, it multiplies and augments through its own exchange. However, in a loan, money is transferred only for its own sake, not for a necessary end of life, which is the nature of a loan. Hence, Aristotle states: “Tokos, then, is the birth of money from money.” Therefore, this manner of acquiring money, namely through tokos or usurious loans, is especially against nature and reason. It is considered more unnatural compared to acquisitions made in other contracts, done purely out of greed, which is evil and against nature. But this kind is especially against nature since it obligates the debtor to restitution of what was received, which the first two methods do not. Thus, it is evident how there is a natural evil in usury and concerning its matter, according to the Philosopher.

Another reason we can demonstrate the evil inherent in usury specifically concerns the very nature of the act from which it arises, which is lending. Since to lend is the proper act, from whose corruption the vice of usury arises, and since this kind of act is one of generosity and favor, as we will show, anything that negates this generosity necessarily diverts the act from its nature and corrupts the virtue of universal justice. Therefore, it entails injustice, and hence is sinful. Lending one’s belongings to another is inherently an act of generosity and favor. This is evident first from the type of act, which is the act of giving, signifying the giver’s generosity. What negates generosity is either the violence of an external agent, an inner natural necessity, or a debt of fairness. Anything transferred by force is not given, but taken. What is similarly transferred by nature, as in the case of inheritance, is not given but left behind. Similarly, what is transferred because of a debt of fairness, like in just sales or exchanges of goods and compensation for labor, is more returned than given. Hence, in transactions where the act of giving is properly observed, generosity should not be compromised. But this act of giving is truly present in a loan, as both civil and religious laws prove. Therefore, if any circumstance is added to this act that corrupts the generosity of giving, that act is evil, corrupt, and sinful. Such a circumstance is added whenever a loan is made for some profit, whether in hope or in reality, because what is done for profit is not done out of pure generosity. Hence, there is always evil and sin present, not just from its end and matter, but also from its very nature, around which it occurs. A third reason, no less significant, is presented by others, namely due to the unjust possession of usuries: for whatever is acquired to be possessed, and cannot be justly possessed, is acquired and possessed wrongfully, generating sin in both the acquirer and the possessor. Such is the case with usury, as will be explained.

Why usury is a sin: For whatever is made one’s own from what is not one’s own, without just title and by deceit of what is not one’s own, is unjustly acquired and unjustly possessed. But in usury, a thing is made one’s own from what was not one’s own, without just title and by deceit, as will be immediately evident. Therefore, it is unjustly acquired and unjustly possessed.

The evidence for this is as follows: the transfer of a thing from one owner to another cannot be justly done except in three ways: either by natural law, as when assets pass from parents to children or heirs upon death; this method is not present in the case of usury. Or by the law of grace and generosity, when the owner of a thing freely gives to another what was theirs. In this way, usury might seem somewhat excusable because the lender is said to willingly give the increase of the usury to the usurer. However, this does not provide a valid excuse; for we call that person a usurer who does not lend freely but in the hope of some increase, which he then receives or hopes to receive. And even if the borrower willingly gives or wishes to give some increase, this expectation on the part of the borrower or the one hoping for such an increase removes the aspect of grace and generosity from the one performing the act, and therefore what he receives is not truly by right of generosity, and the right of grace is not observed on his part.

The only other way for something to become one's own from what is not one's own is by the law of equity: this happens when there is a compensation of some kind, as in sales and purchases of goods or for labor, as when workers are paid wages for their work. It is clear, however, that even by this reasoning, usury cannot be justified as a fair possession or acquisition. First, because such a contract is not equivalent to selling or buying, nor is it an exchange, as can be seen from the wording and the transfer of money or goods lent, which by their nature are given or determined by count, weight, or measure. If more is demanded than what is given, it's an unjust measure, for nothing in the loaned item equals the extra amount taken, neither freely nor by natural right. Second, the injustice of acquiring usury is evident because it is deceitfully made from what is not one's own. In usury, therefore, there is a vice or evil through the guise of fictitious equity. This is clear because the moneylender, in transferring goods or money with the intention of receiving more than he gave, always claims some form of equity in receiving the excess. This equity can only relate to the time during which he grants the loan and expects repayment. This is evident since the excess of usury increases or decreases depending on the length of time. Therefore, the moneylender intends to compensate for the extra he receives over what he gave through time. But time is common to all and is not the proper possession of anyone but is equally given by God. Therefore, the moneylender, in attempting to balance and compensate for what he receives with time—which is equally available to both lender and borrower and freely given by God to all—commits fraud against his neighbor, to whom the time also belongs, and against God, who gave that time freely but sees it being sold at a price. It is also clear that there is no compensation in terms of labor in the contract or acquisition of usury because the moneylender profits the same whether awake or asleep, on holidays or regular days. From all of this, it follows that the excess of usury is acquired and possessed without any right or just title.

Why usury is in its nature evil and blameworthy is because it is done by human will. From what has been said, it is also clear why certain usuries are permitted as licit in sacred Scripture and also in human laws; because whenever usury can be taken as one's own by some just title, its acceptance will be without reproach. And this happens when things are detained by violence, belong to others in truth, and are acquired or held by usury. That usury is a blameworthy evil, and why, has already been explained. But how and to what extent it is so must be clarified. For in theology, usury is condemned as a mortal and grave sin. Hence Ezekiel 18 says, "He who has done all these detestable things will surely be put to death," and usury is enumerated among those detestable things. Therefore, the vice of usury is detestable and worthy of

eternal death. Furthermore, Ambrose in his book "On the Good of Death," and it is also mentioned in 17, question 4, says: "If anyone has taken usury and commits robbery, he will not live."

However, it should be noted that usury differs from theft and robbery: because theft and robbery have no semblance of equity, as they are committed either covertly or overtly with violence. They do not pretend to offer any benefit to the community but rather tend to disrupt its peace. Usury, on the other hand, claims some semblance of equity, as it seems fair and just that some benefit should be returned for a favor granted, even though, in truth, nothing is owed for such a favor in justice, but only in grace, which is goodwill and gratitude. Similarly, in usury, some benefit seems to be claimed for the community, because through it, many inheritances are retained and many damages are avoided. This is why human laws even allow and do not punish it, unlike how they punish and prohibit theft and robbery.

From all this, it is clear that usury is a blameworthy evil according to natural law and a mortal sin according to divine law; and that it is a kind or mode from the genus of robbery and theft.

Chapter 5

Having said that usury is included under the category of theft and robbery as a specific form, and that its nature is such only because of the detention of someone else's property against the owner's will, scholars rightly question whether usury truly represents another's property, and whether it isn't genuinely the possession of the one who receives it. This leads to a common inquiry among scholars: does ownership transfer in usury? On this question, there are two prevalent opinions among scholars: some, primarily theological in their approach, flatly state that ownership does not transfer in usury. In contrast, others who consider written and human laws maintain that ownership does indeed transfer.

To clarify our position on this matter, we offer this chapter. The reasons that might persuade theologians to assert that ownership does not transfer include certain authoritative sources and the logical conclusions drawn from them. For instance, Saint Augustine, addressing Macedonius (found in Question 14, chapter 5), asks: "What can I say about usury, which even laws and judges order to be repaid? Is the one who subtracts or steals something from the rich crueler than he who slaughters the poor with interest?" From such remarks, Augustine suggests that just as thefts and robberies are wrongly possessed, so are usurious gains. He adds that he wishes these would be returned. But nothing needs to be returned unless it belongs to someone else; thus, the usury isn't genuinely owned by the possessor.

Moreover, Augustine, in his "Expositions on the Book of Psalms" (Tractate 30), writes: "Do not wish to give alms from interest and usury." Clearly, anyone can give alms from what they truly own, implying that usurious gains aren't genuinely the property of the possessor. Additionally, nothing should be returned to someone unless they are its rightful owner. Thus, since all usury, according to divine law, should be returned to the one from whom it was taken, as to its true owner, it follows that the person returning

it never genuinely owned it, implying the ownership was never transferred to the one receiving the usury.

On the contrary, some legal scholars argue that, according to every law, when the ownership of a thing is not transferred, it must always be returned in kind to its true owner, no matter who possesses it. But even according to divine law, this isn't judged to be the case in usury. For instance, if someone takes a horse or money or any other thing as usury, they aren't legally obliged to return that exact thing, but merely its equivalent value. Furthermore, if a moneylender sells a horse he received as usury or gives it away, it's clear by law that the ownership is transferred, and the person who gave the horse as usury has no claim over that particular horse. But if ownership wasn't transferred to the moneylender, he couldn't then transfer ownership that he never had, implying that ownership does transfer in usury. Another natural reasoning is that the one borrowing does so with the same intention and will as they promise a profit or interest. Since the will to borrow is entirely free and not forced, the promise of an added interest will also be freely given. Consequently, what is promised should be given with the same will as it was promised.

Therefore, such an increment will be freely given by the one who is the true owner of the thing. But if the true owner of the thing transfers ownership to any possessor, he truly transfers ownership. Hence, it seems that in usury, ownership is truly transferred, even by natural law. And so, by divine law, which does not compel restitution of the same thing numerically, and by human laws which do not compel the restitution of usury and do not punish those who accept usury as they would those accepting someone else's property, and by natural law, those of this opinion strive to demonstrate that ownership is transferred in usury.

Why, then, should it be returned if it is not someone else's property? And if it is someone else's property, how can it be sold or given away as if it were one's own? From this, a legitimate doubt arises. To clarify this, it should be noted that divine law and human law have different definitions of "another's property." Divine law defines "another's property" as anything possessed contrary to the law of God, who alone is the true owner. Therefore, everything possessed by another, if owned against the will of God, is unjustly possessed, and owned against the owner's will, as if it were someone else's property. This is expressly stated by Saint Augustine when addressing Macedonius (found in Question 14, chapter 5): "What shall I say? Do we not prove that all who seem to rejoice in their acquisitions and do not know how to use them, possess what belongs to another? For what is truly someone else's is not possessed rightfully. What is possessed rightfully is possessed justly, and what is possessed justly is possessed well. Therefore, everything that is possessed badly is someone else's, and he possesses badly who uses badly."

Thus, it becomes clear that a moneylender is not the true owner of usury, just as a robber is not the true owner of his spoils, because both possess wrongly. Hence, both possess what belongs to someone else, not their own. However, a true owner possesses what he owns as an owner, treating it as his own. From this, it's clear that according to God's law, ownership is not transferred in usury. Therefore, divine law commands the restitution of usury just as it does for stolen goods. And by "divine law," I mean that which is contained in the sacred scriptures and the decrees of the holy fathers and councils.

Human law, on the other hand, judges something to be “another’s property” only when it is taken or held against the will of the person who, according to human laws, is the owner. Hence, since theft or robbery clearly involves taking or holding against the will of the person who is considered the owner by all people, human law rightly punishes such acts and compels restitution as if they were truly someone else’s property. But what is received or held in usury doesn’t seem to be against the will of the giver, since it’s neither given out of ignorance nor taken by force. Therefore, human law doesn’t regard usurious gains as belonging to someone else. But there’s still doubt based on what has been said.

If divine law judges usury to truly be someone else’s property, why does it not compel restitution of the same thing numerically? To this, we respond that as far as divine law is concerned, the moneylender should be compelled to make the same restitution in number if the very thing remains in the power of the moneylender, unless it is released by the consent of the one reclaiming; otherwise, he is obliged to return its value. However, if the item is not within the moneylender’s control, but has been consumed or transferred to another’s ownership, who is a possessor in good faith; then the moneylender should be compelled to restore its equivalent.

Yet a doubt arises: how can a moneylender transfer someone else’s property into another’s ownership? I answer by saying that in respect to what is judged as someone else’s to him, he cannot; but according to what is his own, he can. But because it is judged as someone else’s by divine law, by the same law it should be judged that it cannot justly be transferred to another without the true owner’s consent. How then can someone retain things given or bought from a moneylender, which he knows were the proceeds of usury? Or why is he not compelled to make restitution, just as one who retains goods stolen or taken by force, however given or bought without the true owner’s consent?

To this, it must be said that divine law primarily considers the justice of any person, or justice, insofar as it directs one to the ultimate end, which is eternal life. But human law looks at this in terms of how people relate to each other for the civil good, which is to live in common honesty and peace. Divine law uses human law as an instrument, wherever through civil actions a man can be directed or misdirected from the end of eternal life: just as all of nature is an instrument of divine power, and not due to any deficiency, but because of the excellence of divine power, which operates some things directly, and some things through nature.

Therefore, since things acquired through usury corrupt rightful ownership only in the person acquiring and retaining them, and do not properly corrupt the civil human good, i.e., peace, because they are not received against the simple will of the giver; it is sufficient for the judge who rules according to God’s law that the moneylender only make satisfaction towards God, namely, that he only restores as much as he receives against God’s law. But because the received item does not make the giver unjust according to human law, and not even in divine law, except for the sole reason on the part of the moneylender; therefore, the judge does not compel restitution of the same item by any law, nor is it necessary for the stated reason.

Because of these reasons mentioned, we believe that in usury, ownership is not transferred according to divine law, but we judge it to be transferred only according to human law.

Chapter 6

There are some legal terms that appear to wholly excuse the fault of usury in certain exchanges and contracts due to doubt or potential risks. Therefore, it's important to consider when and in which contracts these terms can provide an excuse, and when and where they cannot.

Firstly, it should be understood that there's a general rule among all scholars which must stand firm: no condition or circumstance can excuse any flawed action or behavior unless it can remove the very rationale of the flaw. For instance, when the Hebrews were excused from stealing from the spoils of the Egyptians, it was solely because a higher command made what was not theirs, theirs. Therefore, if doubt or risk can excuse, it will only be if they have the power to remove the rationale of what's truly called usury.

Since in loans, the fault of usury is attached because they are made with the hope of profit, which is against the nature of a loan; thus, because doubt and risk in their nature don't remove this flaw from a loan made in the hope of profit, neither doubt nor risk can excuse the fault of usury. This is proven by the decree called "naviganti." For example, if someone lends money to a sailor hoping for some profit, even if he assumes the risk of the voyage, he is still deemed a usurer, even if he loses everything. Likewise, if someone lends money to another, say a hundred pounds for ten years, such that if one of them dies within this time, the other is freed from the debt, and from the loan he accepted; but if both survive, the one who took the loan will give back two hundred and fifty pounds after ten years to the one who gave the loan, he is not excused from usury due to doubt and risk.

However, wherever they can remove the rationale of the fault of usury, there they can provide an excuse, and this occurs in certain contracts. To specifically understand how and where this can occur, one must consider those contracts or exchanges in which more is received than given. If this exchange happens due to time, it already commits the appearance of flawed usury, because such surplus, neither from legitimate labor, nor from the proper use of the thing, nor by compensation of another substance, can be equated to justice. But if this surplus is not due to time, at least the reason of doubt or risk can fulfill the equity of justice.

For instance, if someone buys an item for a price lower than its value at the time of purchase, or for an equal value, yet expects to receive the item at a time when he hopes it will be worth more; or even if someone sells an item for a price higher than its value at the time of sale, still hoping that it will be worth that amount at the time of payment: if there is genuine doubt as to whether the item will be worth more or less at that future time for which it is being sold or purchased, in such cases, the uncertainty can provide an excuse, ensuring fairness and justice, even if more is received than is given. This is because the uncertainty places a value estimation on the goods based on their nature, which at such times could be worth more or less. Therefore, it's not just

the passage of time that increases the expected value, but also the nature of the item itself, which can be worth more at one time than another, and sometimes less. In this way, local uncertainties and risks can excuse certain contracts, which might otherwise be deemed usurious. This is evidenced by the aforementioned chapter, “naviganti.”

A clearer understanding of the above can be obtained through examples. Let's assume that after August, someone has a lot of grain or wine for sale. At that time, a measure of grain is worth only three solidi, and a jug of wine is worth ten. He sells the grain for four solidi and the wine for twelve, but will receive the money at the Feast of St. John. He did not want to sell at a lower price, even if he would receive payment immediately, because he estimated that his goods would likely be worth that much by the anticipated payment date. I argue that he is not committing usury, even if he receives more in hope than he gives at the time of sale, because he doesn't receive that surplus due to the passage of time but because of the nature of the goods, which can reasonably and justifiably be expected to be worth that much at the time of sale, even if they were not worth that much at the time they were sold. This reasoning can be applied to other contracts as well, even when an item is bought for less than its value at the time of purchase, but is to be received at another time, at which it's uncertain whether its value will increase or decrease.

As has been said regarding the rationale of doubt in loans and other contracts, the same must be said about the rationale of risk: because the risk, even concerning lotteries, doesn't remove the concept of usury in a loan, as evidenced in the chapter “naviganti.” The reasoning for this is clear from the above. However, in other contracts where there appears to be an excess in what is received over what is given, the rationale of risk can provide an excuse, especially when that risk can compensate for the said excess. For items that are possessed without risk of the same kind are valued more than the same items that are at risk. Therefore, compensation which is estimated to be more or less valuable due to risk reverts to the nature of the item itself.

Chapter 7

However, we observe certain conditions, which according to the law seem to excuse purely usurious contracts. This is evident first in Deuteronomy 23, “You shall not charge interest to your brother; interest on money, food, or anything that is lent out at interest.” And it continues, “To a foreigner you may charge interest.” Therefore, it seems that the interest taken from a foreigner, especially one of a different faith, is not seen as wrongful. Thus, it appears that the condition of the person, in being of a different faith, excuses the usury.

Similarly, according to St. Ambrose in 14, Question 4, “Demand interest from the one whom you rightly wish to harm. To whom arms are rightly given, interest is rightly taken away.” From this, it is clear that the condition that makes an enemy worthy of death excuses the vice of usury.

A third condition can be found in the law in the case of dowries or paternal promises: for example, when someone receives with his wife in dowry a certain estate, land, or annual income, as a certain amount of money in pledge, he can receive such fruits

without reduction of the dowry as long as the reason for the pledge remains. This is found in the Extravagantes on usury, chapter “salubriter.”

A fourth condition can be drawn from the nature of the thing itself: namely, when the item taken in pledge is by right that of the one taking the pledge, but is unlawfully detained by another, then he can receive the fruits of the pledge beyond the principal sum, because he retrieves what is his, not what is another's. This is found in the First Decree on usury, chapter “pluris.”

A fifth condition that can excuse is called “interest,” or compensation for loss, and not hope of profit. For example, if someone has lent money freely until a specified date when he needs his money for some necessity, and the loan hasn't been repaid by the aforementioned date, the lender can reclaim beyond the principal whatever loss he incurred due to the failure of repayment. In this way, a guarantor can reclaim from the debtor the interest he paid to the creditor because of the debtor's failure. This is confirmed in the Extravagantes on Guarantors, in the two decretals.

Lastly, the sixth condition also excuses usury when something is freely offered beyond the principal. Because, according to Gregory in the register and found in 1, Question 5, “A gift inflicts no stain of guilt on anyone, which doesn't proceed from the solicitation of the recipient.”

The reason why such conditions excuse usury, and when they do, becomes quite clear and evident when we consider what was said in the preceding chapter. Namely, no circumstance can transform moral matters from good to evil, or vice versa, unless it removes from its nature the rationale of goodness or wickedness. Usury, insofar as it is seen as a vice, can arise primarily and inherently in loans, and secondarily in other contracts. In loans, usury is a vice. First, because it corrupts generosity, as the essence of lending is to give freely. This vice is removed by the final condition, namely when something is given or received freely beyond the principal. Usury also corrupts the proper end of loans because it is taken with the hope of profit and without just compensation. This wickedness is removed by the first, second, and fifth conditions.

The first condition is that which shows that God alone is the lord of all things, and everything is given to promote the worship of God. Thus, by virtue of faith, the wickedness of usury is removed in that case because it isn't made with the hope of profit. Similarly, the second condition arises from a zeal for justice and charity, which, as much as possible, seeks to destroy the enemies of faith, namely tyrants and heretics, even using the same rights when their property cannot be acquired except through usury. The fifth condition, however, clarifies the rationale of justice, because it is not taken in the hope of profit but as compensation for a loss. Therefore, that excess is justly acquired.

Sometimes there is also the practice of taking usury in other contracts, where more is asked for than what is given without reason. This can also be excused by all the aforementioned means, and even by two others. This might occur when what is received beyond the principal becomes one's own by the law of nature, such as the fruits of pledges for a wife's dowry or for the provision of children. Or it can become

one's own by the law of fairness, like the very thing which is pledged when, according to equity, it belonged to the one who receives the fruits.

This should suffice concerning the conditions that excuse from the vice of usury: how many they are, when they can excuse, and when they cannot.

Chapter 8

Seeing that the ancient enemy sowed the weeds of greed and avarice into human nature, the vice of usury emerged. This vice was not only in loans, which, through the divine light of truth in Sacred Scripture, is clearly condemned and uprooted, but it also spread to other contracts where, under the guise of human equity and justice, it hides and acts like a concealed interest. Therefore, in this section, as we seek to expose this evil, we will discuss those contracts where it lurks.

First, we reiterate what was previously mentioned: usury is anything beyond the principal received without a just title, whether in loans or other contracts. What accrues solely due to time in contracts, as in loans, is added to the principal without a just title. This is because one essentially profits through deceit, namely by selling time, which belongs to God and is commonly given to all. It cannot have a title based on natural succession, gratuitous donation, or fair profit derived from the merit of lawful and personal work, or by compensation for one's own property. Thus, any contract where more is received than given, either in hope or in reality, solely because of the time factor, is called a usurious contract. This concept is discussed in the decretals Extra. de usuries: in the city and in consultation.

However, it is essential to understand what we mean here by "principal" (sors), and what is accidental to it. In Sacred Scripture, the term "sors" is used in two ways. One way signifies a mark given to distinguish mixed items from each other, as indicated in Proverbs 18, where it is said that "lots settle disputes." And again in Proverbs 16: "The lot is cast into the lap, but its every decision is from the Lord," and in Acts 1, "The lot fell to Matthias." Another way "sors" is understood is in reference to an office or property rightfully possessed, or due in the division of certain persons or possessions. It's like how the "lots" of the sons of Israel denote rightful portions assigned to each tribe or individual. Here, it's also understood as property rightfully possessed or owed to someone. That which is deemed accidental to the "sors" does not pertain to the property itself. From this, it's clear that the specific use of something and its fruits are not accidental to the "sors." Whoever possesses the property or possession in something also has its use and fruit by right. Therefore, one who buys a field or horse to gain more in fruits, both in terms of the fruits and the use of the horse they bought, receives nothing more than what's accidental to the "sors" since all of it, including the fruits and use, is part of the "sors."

Furthermore, it's essential to note that the fruits and uses of things can increase or decrease in value over different times. This can happen in three ways without time being the primary cause. First, when there's no reason for such an increase in the use of the thing. Second, due to the scarcity or abundance of things. Things that diminish through use naturally wear out over time and become rarer, distancing themselves from their origin. For instance, grain naturally abounds more in autumn than in spring.

Thirdly, this can happen due to the very nature of things, which may gain value over time, as seen in crops, forests, and animals. Another reason arises from the nature of the thing in relation to the conditions of the place.

It is thus generally to be understood that in all contracts wherein more is received by the seller or buyer than what was given, and there is no reason for such an increase in the use of the thing itself, its nature, nor due to any condition of time inherent in the things as shown in the three aforementioned ways, but the increase arises due to an extension of time granted by the seller or buyer, so that more is received; then, such an excess over the given amount is called usury. The vice of usury is present in such contracts and loans because it arises without a just reason. Legal experts and even common parlance term this as selling or buying on credit.

However, if more is taken than given simply because of a higher valuation by the seller or buyer at one time than at another, due to any of the three aforementioned causes, or even due to the delay of a thing at one time more than at another, then this can happen without the vice of usury. This is because the excess in such cases is compensated for by the greater intrinsic value of the thing for the time during which such an excess is received and is not taken for the extension of time.

Yet, it should be noted that even if such contracts can be excused from the vice of usury for the reasons stated, they are not entirely exempt from the vice of greed. For this reason, it is said in canon law, about the “shameful profit” (*turpe lucrum*), as found in 14 quaest. cap. 4: “if a cleric...” and cap. “whenever harvest times.” It is termed “shameful profit” because it arises due to time, much like usury, albeit differently. Or “shameful profit” is said concerning the end, because such contracts are not made for the broader needs or utility of human life but rather for increasing wealth. Greed, which has no end since the avaricious are never satisfied with money, motivates this. Therefore, they are tainted with vice. However, if such contracts are geared towards the necessities of human life, they are excused from all shame, as stated in the cited chapters, 14, quaest. 4. By this, it’s also demonstrated that there isn’t usury in such cases, for usury isn’t excused, no matter how much it is oriented towards life’s necessities.

From these points, it’s also clear that usury can arise not only from the extension of time but also from the nature of a thing related to the condition of time. Similarly, from the nature of a thing in relation to a place’s condition: namely, when things are loaned, whether money, and are to be returned equal in kind, number, weight, and measure. And yet, if the lender hopes that the same thing will have greater value in the specified time it should be returned, or in a particular place, and for this reason lends it to be returned at such a time or place, so that at the determined time or in a specific location it is repaid to him, I say that here there is a clear vice of usury. This is because more is hoped for from the loan, or because of the loan, than what is given.

By the same reasoning, the vice of usury can occur in other contracts where more is received than given for similar reasons. For example, if someone were to sell or buy grain or wine at a certain time to receive more at another time than they had given, merely because of time or location, even if the items are worth that much at that time, it becomes a vice of usury due to the intention of usury. This, however, could be done

rightly if only the nature of the thing were considered, and not because of time or place, which are in no way part of the thing itself. Hence they neither make the items cheap nor dear in themselves. Thus, it's clear that in the same kind of contract, the vice of usury can arise from a corrupt intention and the vice of greed can arise without the vice of usury due to the shame of profit. Otherwise, it can be done without any vice when it is done out of the necessity of life.

From the aforementioned, a doubt that is raised by some is also resolved: namely, whether the vice of usury can arise from anticipating time, just as from delaying or prolonging it. For instance, if someone owes another a hundred solidi payable in a year, or annually over two or three terms, and the creditor wishes to remit to the debtor a third or a fourth or a fifth part if he pays him at the beginning of the year, or before the set terms, when asked. It's evident that more is received than given in this case due to time. For example, the debtor rightly owed a hundred solidi, and because of the anticipation of time, he only pays eighty. Therefore, he receives beyond what he gives, namely beyond the eighty, twenty: because those twenty belonged to the creditor, and they became the debtor's due to the anticipated time. Hence, by the rule given concerning the cause of vice in usury, which is when more is received than given because of time, it seems that such a case is usurious.

However, there are two ways to excuse usury in this case. Firstly, when the creditor generously and liberally grants this surplus to the debtor, and the debtor does not receive it due to time. Secondly, when the debtor compensates for this surplus through the loss of his own property, as when he cannot have money without disposing of and suffering a loss on some of his property, from which he pays the creditor what he asks before the term of payment; otherwise, it's a usurious case.

A special difficulty seems to lie in those contracts wherein items are bought or sold which, with the passage of time, increase or decrease in value, like crops, livestock produce, tree fruits, or forest yields. Because such items are often sold or bought before the time of their utility or use and are bought for less than they will be worth at the time of their reception and use, it's a valid question whether receiving or hoping for more for them at the time of their reception makes the contract usurious. Those who resolve this issue make a distinction: either the buyer, having ownership of such a thing from the time of purchase, regardless of its state, assumes the risk, or the risk remains with the seller.

If in the first way, they want the contract to be lawful because of the risk involved: just as someone renting out their property and receiving something extra is excused for this, because the risk of the property remains with the lessor, as mentioned in distinction 88: the buyer. However, if in the second way, then they condemn the contract. But if we attend to the truth of the matter, such a distinction doesn't apply here: if a lessor receives something beyond the rented item, this seems equitable because it is compensated by the use of the rented item, which is the property of the lessor and pertains to his lot, i.e., to the rented item. The property remains entirely with the lessor; hence, the risk also remains with the lessor. But when someone sells an item, not just its use but its very ownership, it's clear that the risk legally transfers to the buyer. So, if the seller of such items keeps the risk with himself, the ownership isn't fully transferred, and thus it isn't a just exchange. But it's evident that the buyer has already transferred ownership of the money they paid. Hence, it resembles a loan

more: and if more is hoped for due to a future set time than what was given, it follows that it's the vice of usury.

Therefore, without prejudice, it seems to me that a different distinction should be made in the aforementioned contracts: especially since we don't easily see the risk involved in the sale of spoils or forests, as in other cases. Items of this nature can be bought either as necessary for the buyer's livelihood or purely for profit. If in the first way, there's no vice, even if they're likely to be worth more at the time of their reception, as long as a just valuation was made at the time of the contract, which follows the natural law, and also human custom in this regard: that an item can justly be valued as much as its use is necessary, either simply or for a set time. And since, in the eyes of the wise, a perfected item is valued more than an imperfect one, and for a set time, an item is valued as much as it can be sold for among people; hence, even if such items are sold for less when they're imperfect than they'll be worth when perfected, it doesn't seem to me that someone is receiving beyond their lot, as the sold lot belongs to the buyer, with all its potential for growth and usefulness.

However, if in the second way, that is, if such contracts are made purely for profit, the shameful profit can still be judged as arising from greed, which emerges due to the conditions of time, as mentioned above regarding other cases. Again, a vice can occur in them: and this happens when such profit is sought only because of time, and the risk is removed, or there's no reasonable doubt about the risk, whether the items might be worth more or less due to time. Let this be said universally regarding the nature of contracts where the vice of usury might somehow occur.

Chapter 9

Having discussed equity and the justice of contracts in general in the preceding chapter, according to our proposition, it now seems appropriate to discuss contracts made for a specific duration and not just in general. Regarding this, two investigations seem especially useful. First, whether it's permissible to buy certain goods, like revenues or possessions for life, which is an indefinite period. Second, whether buying any of the aforementioned for a determined period, for instance, for ten or twenty years, is permissible. Both of these frequently occur among people in our times.

Concerning the first point, we should note the arguments of some and their reasons who condemn such a contract as usurious. First of all, we confess that we have never read or heard any authoritative source, either in canon law or in extraneous letters, or in the body of the law, that supports this opinion. However, in the writings of certain scholars, we have seen what we will outline below, and we will try to confirm these statements with reason as much as we can. Indeed, Goffredus, who is of great authority in canon law and summarizes the titles of the decretals, says so in the title on usury, chapter "to the sailor": there he explicitly says that giving a certain sum of money to a Church in exchange for some possessions to be held for the life of the giver, with the understanding that upon the death of the holder, the possessions revert back to the Church, is a usurious contract. The reason he gives is that the giver hopes to live beyond the time when he would have received from the revenues the entire amount he had given and more. Hope alone makes it usurious. This is the rationale and sentiment of the Master.

Another theologian, asserting a similar opinion, adds reasons: first showing that such a contract can't be excused by the notion of doubt or risk. For it is no different in kind from a contract where someone gives a hundred pounds so that they receive ten annually as long as they live, hoping to live for eleven years or more. Or that in the eleventh year, they receive a lump sum of a hundred and ten pounds; with the condition that if they die earlier, they receive none of the whole sum. It's clear that in this latter contract, there is the vice of usury; it's not removed because of doubt or risk, as proven by the aforementioned chapter "to the sailor". Therefore, in the first contract, there would similarly be the vice of usury. It's not removed by the reason of doubt, as there's always hope of receiving more. By this rationale, the same doctor believes that both the seller and the buyer sin with the vice of usury. According to this rationale, just as the buyer hopes to receive more than they gave, so does the seller because they hope or at least wish for the buyer's early demise. And if the buyer dies in the first or second year, it's clear that the seller received more than they gave. However, no one whom I've heard or read extends this vice to the seller as usury.

The same theologian seems to further substantiate this kind of opinion by referring to the words of the philosopher, who in two places, namely in the 10th of the Ethics and the 1st of Politics, speaks about the nature of money. He shows that the invention of money was made for the purpose of exchange, i.e., to transfer other goods necessary for human life. Therefore, when money is transferred to another to increase and multiply itself, "thokos" occurs, that is, the vice of usury, as evident from the philosopher's statements.

Thus, when the purchase of revenues for life involves the transfer of money so that it might multiply itself, it always and naturally seems to be the vice of usury. Moreover, this sentiment seems to be given by divine law, Leviticus 24, where it is said: "When you sell something to your neighbor, or buy from him, do not take advantage of each other; but buy from him according to the number of years of the jubilee and sell to him based on the expected yield." Commenting on this, the Gloss says: "When you sell, etc., here according to the letter, it morally instructs that we should be compassionate in contracts with neighbors, so that no one becomes excessively burdensome by taking advantage of the poor's necessities, nor seeks to acquire the possessions of others, but to lend to the needy and gradually receive what's lent from the fruits of the fields."

From this authority and the Gloss, it seems that when one buys the possessions of their neighbor, with the price determined based on the yield of the fruits, it is not permissible for the buyer to receive anything beyond that. But everyone who buys possessions or revenues for life hopes to receive something beyond the given amount and does receive it if they live beyond what they hope for. Therefore, the contract is illicit, even according to divine law. This is also suggested by what has been said about the cause of usury: because in such contracts, one always hopes or receives more than what is given, due to the mere passage of time; but this cause makes the contract usurious.

However, not daring to declare the opinion of such and so many men wrong, especially when the opposite opinion is held with the acquiescence of so many of the ancient and modern scholars, it seems appropriate to also examine the truth of this question through reason, as much as God grants to our limited capacity. Firstly, it should be known that we have seen the opinion of a renowned doctor of law, who condemned

such a contract not as usurious but as flawed due to the circumstance of an associated sin, specifically in the seller; because the seller hoped for the death of the buyer. Although this is bad, it is not inherent in the nature of the contract but happens externally. Therefore, the contract should not be condemned for this reason; hence, according to the aforementioned doctor, if such contracts were made for the lifetime of the sellers, they would not be wrong.

Thus, in exploring what injustice might be inherent in such contracts, and whether they can be legitimately made, and how, the reasons of the opponents are addressed. We say firstly, that whoever is the owner of something is also the owner of its use.

Secondly, we say that the true owner of something can transfer it to another either freely or for a price or in exchange for something else. Thirdly, we affirm that an owner can transfer the use and the fruit of his property. Fourthly, we say that just as the true owner of a thing can give or sell the property of that thing, or its use or its fruits in general for any duration, he can also give or sell it for a specified or particular duration. All of these points are substantiated by the genuine concept of ownership.

It's also important to note that in a loan, only the substance of the thing and its value should be considered in terms of its substance, and not in terms of its use or fruit. This is because it is understood to be given freely as the nature of a loan, and hence the lender should not expect anything beyond the value of the loaned thing from its use, because the loan is transferred in terms of its substance, and not in terms of its use. This, however, is different for items that are leased for use. The substance of a thing in itself does not vary in degrees: but in the contract of sale and purchase, not only the substance of the thing is considered but also its fruits and use. But because of the fruits and use of things, their value naturally increases or decreases among men. Therefore, by the nature of such contracts, one can hope to receive beyond what is given, or even fear to receive less than what was given. Therefore, traders can hope to profit from trading, which they cannot if giving a loan.

It should also be noted, as the philosopher says and discusses in his Politics, Book 1, all exchanges between people occur due to the necessities of human life. Therefore, it's required that a measurement of these things should be made in terms of having more or less value, according to how they serve utility and necessity for human life. Such utility varies in degrees in many ways: sometimes by time, sometimes by place, sometimes by their condition, and sometimes by the nature of the things themselves. Therefore, in a sale, the substance of a thing is transferred with its use, either generally or for a specified duration. And when it's for an indefinite time, it's clear that the buyer will receive more without any fault, because the utility and fruits of the thing have been transferred for an indefinite duration along with its substance. However, when in a sale only the substance of the thing is transferred with its utility for a specific period, and not indefinitely, it is not just according to the nature of the thing, that a thing whose substance is possessed temporarily is valued as much as something that is always possessed; because it does not result in as much utility for human life for the possessor. Even if more is received or hoped to be received than what was given, no injustice necessarily follows. Especially when the buyer intends to buy for the necessities and utilities of life, and not for profit or augmentation of money; this too, in other purchases, constitutes a sin, according to the philosopher.

Sellers, in most cases, always seek some benefit, either for their household, the Church, or the city. They do not act out of greed, and hence, they are more excusable. Fifthly, we say that by the same right by which someone receives more than what they have given in outright purchases, by that same right, they receive more than they have given in purchases of possessions or income for life. This is because all that extra received is by chance since they purchase the substance of the thing with its use and fruit, just like the one who purchases for an indefinite duration. However, a question remains according to this view: whether the seller can retain the substance they received when the buyer lived very little or not at all after the purchase. The resolution is that, due to the inherent uncertainty and risk of such contracts, what was uncertain becomes certain. This rationale excuses such contracts sometimes because of their nature, which is not the case with loans, as there the occurrence is due to reasons other than the nature of the loan itself.

For when risk or uncertainty arises equally from the nature of the contract, both on the part of the seller and the buyer, then the thing being sold or bought would justly be valued less than if no such risk or uncertainty were involved. Thus, the contract is just by its very nature, given that there is equal uncertainty on both sides as to whether they might receive more or less. For example, if someone buys a horse and pays a hundred pounds for it, it is evident that if the horse dies the same hour after payment, the sellers justly retain the hundred pounds, even though the buyer has gained no benefit, because the seller has rightfully transferred their property to the buyer. Similarly, one who sells possessions for an unspecified period, where the period is determined by nature and not by human agency, has justly transferred their property, and the transfer is justified by the nature of the contract.

Furthermore, it should be noted that in these types of sales and purchases for life, the free will of both the seller and the buyer is evident by the nature of the contract. Especially when the wealthy sell and the poor buy, which is more common by the nature of such transactions, both parties act for their benefit. For the wealthy is not compelled to sell, nor is the poor obliged to buy. Nor is the poor required to give or loan something to the wealthy for free, nor is the wealthy obliged to give anything from their wealth to such a poor person. Therefore, every transfer made by the free will of the owners is just. From this, it follows that whatever a buyer or a seller might receive beyond what they gave, they receive it justly, as it becomes their own, by the free will of the owners. However, this justice cannot be found in loans when more is received in profit from a loan. For the one receiving the loan does so willingly, as does the lender. But the borrower does not freely promise or give more, but rather is almost compelled by the lender's greed, who, though obliged to act without expectation of gain, refuses to do so without hope of profit. Therefore, that additional amount cannot belong to the one who receives it in the same way as the loan that is returned to them, nor by any just title.

From the foregoing, it is inferred that both due to the just valuation of things at the time of the contract, because a thing is justly valued as much as it relates to the benefit of its possessor, and is worth only as much as it can be sold without deceit, and due to the risk equally attached to the contract itself by its nature on the part of both owners, and also because of the free will of the owners transferring goods with their profits, such a contract is by its nature free from the flaw of usury. However, we have said "by its nature" because accidentally, a vice of base profit can occur in the contract, and

sometimes even the vice of usury. The vice of base profit, without the consideration of usury, occurs when a wealthy individual, self-sufficient for life, according to the nature of the thing and the person, and according to the status of the person, purchases such income to become richer and to acquire more wealth without a just and pious necessity. Therefore, it is termed base profit, because it is not for the legitimate end of human life but out of greed, which knows no end.

On the other hand, the vice of usury can arise from such a contract when a person, impoverished, sells such an income or his possessions reluctantly due to compelling necessity, because of the lack of a loan, which he does not find among the wealthy. Usury also occurs when the wealthy, considering this need of their neighbors, give less than a just estimate for the possessions of the poor they acquire, whose needs they are bound to alleviate without loss out of fraternal charity through a loan. In this regard, the law of Moses speaks in Leviticus 25, as appears from the text, and the introduced Gloss, which says: one must show compassion for the needs of neighbors, and no one should trade on the needs of the poor, but rather lend to the needy and gradually recover the loans from the produce of the fields. From this, it is clear that in such a case, the sale, due to the lack of a loan, and the purchase take place almost in place of a loan. Also, the estimation of the buyer is less just because of the seller's need. Therefore, what the buyer receives more than what he has given, he does not have a just title of possession. Thus, in this consideration, not only can the vice of usury occur in life-term purchases but also in outright purchases for all time.

It should be universally noted that whenever someone buys any possession, whether for a period or outright for the sake of profit, which is expected from it only due to time and not due to the nature of the possessed thing, there is a vice in such a contract. And such profit is termed "base" in law.

Indeed, if such a possession is bought for the sake of profit, and it was just out of fraternal charity to give a loan to a neighboring pauper, so he does not fall into extreme poverty, as the old law commanded, then such profit from the purchase has the vice of usury by equivalence to lending; because more is received there than is given without a just title to possessing the item. However, if someone buys another's property not for profit but due to a necessity or benefit to their life, even if they receive more over time than they gave at the time of the contract; since this is received from the nature of the contract itself, and accidentally due to time, I believe no vice is present.

How we can address the statements and arguments of adversaries, let us now explain. Firstly, we state that Geoffrey's statement is not confirmed by any canon authority. Secondly, his example is said to hold true when a Church, driven by necessity, is compelled to pawn its possessions, which it neither can nor wishes to sell outright. For then it is not a sale in the proper sense but a pawn. For whoever cannot sell a property or possession outright also cannot sell it on a temporary basis. It's evident that although certain Churches possess many things, they cannot alienate the right of possession without the authority and consent of a higher prelate, neither outright nor temporarily. Thus, such sales by Churches are pawns, and for this reason, this kind of contract is usurious, because it is not permissible to receive fruits of pawned items beyond the principal, since they are not of the nature of the principal.

Regarding the Master's point about the hope of living just so that one might receive more than they gave, it must be said that such hope or receiving more does not constitute the vice of usury unless what is hoped or received is in addition to the principal and is not the nature of the principal. Otherwise, anyone buying fields or animals, hoping to receive more in proceeds over time or from the items sold at another time, would be usurious. But in just sales, when an owner transfers ownership of their thing with its use and fruit either outright or temporarily, it's clear that all proceeds of the sold item are of the nature of the principal and not accidental to it. Thus, such hope or greater reception does not make the contract usurious. And I say this with all due respect to such a great Master.

Regarding the point brought up by another learned theologian, it seems to us there are two types of doubts: namely, excusing and non-excusing. A doubt excuses when it removes inequality and makes a just estimation of what's given and received in terms of the nature and use of exchanged things. For example, when someone buys ten annually for a hundred, paid immediately, to be received for their life or another's. And given the utility of anything concerning its possessor, it is legitimately doubted whether it is more or less due to the indeterminacy of time. Therefore, an equivalent estimation is made due to doubt. From this, it is clear that the reason for the doubt creates a just estimation. Hence, whatever more is given or received, either by the buyer or the seller, is received as if from their own principal. However, a doubt that can arise only concerning profit or loss from a determined time cannot be estimated, as no just estimation arises from its doubt. For something more is hoped for only due to a determined time, which cannot provide just compensation. Therefore, it's clear how, outside the given situation, they are not of the same reason. For in the one who hopes to receive both a hundred and ten simultaneously in the eleventh year, just due to the determined time, compensation for inequality is made, thus making the contract usurious. But in another who does not hope to receive more except in an undetermined time, and justly according to nature from the bought item, then, as shown, nothing is received beyond the principal, but everything is hoped for as one's own, and of one's own principal, not made one's own because of the reason of time, but because of the nature of the contract.

What is also presented as a second point to confirm this opinion about the statements of the philosopher, can be refuted as follows. First, the philosopher's intention, as evident from his statements, is that currency was invented for the purpose of exchanging other goods, whose use is essential for human life. Therefore, whenever someone uses currency in a way to multiply it for its own sake, there's an abuse of currency, an unethical transaction, which he calls "thokos," that is, "parent of the thing." From this, it's clear to me that the contract under discussion is not "thokos."

First, even if the returns on money are bought for a lifetime, by the nature of the contract, they aren't bought to add money to money, but to purchase essential goods for human life from the bought money. This purpose is contrary to the purpose of "thokos." There's another reason it can be distinguished from "thokos": in many of these contracts, it's not just counted money that's being bought, but actual goods, which either serve human needs through their yield, like land and other possessions, or in their own right, like wheat, wine, oil, etc. "Thokos," as the philosopher says, is "money for money."

A third reason that this type of contract isn't "thokos" comes from the philosopher's idea that "thokos" arises when money is acquired through money in a way similar to parents generating offspring. When the offspring is generated from parents in multiplication, the parent entities remain uncorrupted by their offspring. However, in the case of someone giving a hundred pounds to receive ten annually for as long as they live, there's no generative relationship, because the hundred pounds don't remain either in potential or in the domain of the giver with its offspring. It's entirely transferred away. Therefore, such a contract should more rightly be called an exchange of goods than a generation of one thing from another. From all this, it's evident that the "thokos" argument doesn't pertain to these kinds of contracts.

Regarding the Divine Law that was presented against this type of contract: Firstly, that law, when understood in a literal sense, is deemed divine, but is temporal, like many other laws which were given to that people in a symbolic sense. Thus, just as the observance of the Jubilee does not persist among Christians, so too do laws given because of the Jubilee, of which the introduced law is one, as is clear from the text. Furthermore, if we consider the moral essence of this law, as the gloss explains, it doesn't argue against the nature of these contracts, but rather against the perverse intentions of wealthy buyers, as the gloss says, who exploit the poor's necessities and aim to acquire others' possessions when they're obliged by fraternal charity to lend to the needy and gradually receive what they lent from the yields of the fields. Clearly, this happens in these contracts by accident and is not inherent in the nature of the contract. Neither the law nor the gloss inherently taints this kind of contract with the vice of usury, but only accidentally. Regarding the argument about the duration of time, the truth becomes clear if the previously mentioned points are recalled: time can relate to some exchanges of goods, either adding or subtracting just value.

In this manner, if something is sold for more or less due to the consideration of time, such a contract is not usurious. For instance, a measure of wheat is, all things being equal, rightly valued more in summer than in autumn due to the nature of the season. Therefore, if someone receives more wheat for the summertime than they had given in autumn when they purchased the wheat, they are not deemed a usurer, as long as they intend to sell the wheat specifically for that season and not another. Similarly, it is clear that ten pounds annually forever is rightly valued more than for a specific period or for the duration of a young horse's life than an old one, and this is because of the nature of time. However, this is not considered usury if someone buys the ten pounds for an indefinite period, even if they receive or expect to receive more than they gave, even if that surplus accrues over time with certainty. Therefore, someone who receives more for a specific period should not be deemed a usurer. One reason for this is that by the nature of time, the thing becomes one's own with its profits. Therefore, everything is of one's own accord.

Time in contracts can also be considered as contributing nothing or taking away from the value of a thing due to the nature of time but is merely considered as an external measure of duration. Therefore, when something extra is received or expected due to time understood in this way, a vice of usury or injustice is apparent. This surplus, beyond what was given, is neither compensated for by the nature of the thing nor is it given or received freely. Therefore, it cannot rightfully become one's own but remains always someone else's.

Thus far, we have discussed the buying and selling of revenues and possessions for life. We ask all who happen to see this work to correct us if, out of ignorance, we have spoken erroneously. We always intend, both here and elsewhere, to affirm what we write and say without prejudice. Next, we must examine the second part of this chapter, namely contracts where certain revenues or possessions are bought for a fixed period. For instance, someone may have certain revenues, such as from a parish, endowment, heritage, or elsewhere, and they wish to sell these revenues for six or ten years or some fixed period to have immediate cash on hand. The question arises whether these can be legitimately purchased for a lesser price than their worth over the specified years. It seems they can, for, as previously mentioned, a present and consolidated thing is valued more than a future and dispersed one. Moreover, the seller often gains as much or even more benefit from such a sale than from retaining the goods. Furthermore, the Church allows clergy marked with the cross to sell the fruits of their benefits for three years. This would not be permitted if such contracts were inherently flawed.

However, it is clearly stated regarding usury that in such contracts, the buyer receives or at least confidently expects more than what is given. Neither risk nor doubt arises from the nature of this contract. Therefore, it simply seems usurious on the buyer's part. Nonetheless, without prejudice, we believe that in such contracts, no vice arises on the seller's side as far as the nature of the contract is concerned. As for the nature of time, some may see this contract as usurious on the buyer's part because they will receive not only in hope but also in actuality more than they gave, and this is solely due to time. However, when the deficit in what is given compared to what is received is compensated for by an abundance received solely from time, then we deem the contract usurious because such surplus is transferred without just cause. However, it seems to me that even on the buyer's side, a contract can be just and is just in terms of its nature.

However, an injustice can occur incidentally in two ways. First, when it corrupts the charity owed to a brother: specifically, when the buyer sees a brother in need, either for the wellbeing of his body or the salvation of his soul, due to which he must sell his revenues or possessions. In such a case, if the buyer is wealthy and able to assist without harm to his neighbor, I maintain, without prejudice, that he is obliged to lend to him and, as a form of collateral, accept the mentioned revenues or possessions until he receives back what he lent. This is evidenced by the law in Leviticus 24 and its Gloss.

The second way an unjust contract can occur on the buyer's part is due to the corruption of the intended end, which aims at the benefit of human life. Hence, when the motive is solely for profit and the accumulation of wealth, it then becomes ignoble gain. But in the first manner, it pertains to the vice of usury.

The nature of the contract itself has three elements that demonstrate its fairness. One is the seller's generosity, where he can freely give his property or exchange it for something of lesser value than his possession. In this respect, there is no fault in the buyer, as what is received entirely depends on the free will of the owner. Another element is the fairness of the exchange. When something is sold for its just value, either as estimated by the seller and buyer or by those who adhere to established laws, there is justice in the exchange. It is evident that a seller cannot have more for

the time during which he sold, and future goods over time do not hold the same value as those immediately available, nor do they provide the same benefits to the possessor. This means they must be valued less in terms of justice. The third element is the nature of the lot. The surplus received over what is given is characteristic of the lot because the buyer acquires everything that was to come in a determined time and therefore does not receive beyond his rightful lot, just as one who buys revenues for an indefinite period.

These are the reasons demonstrating the justice of such contracts. Through them, the opposing argument that seemed to indicate a usurious contract is dissolved. Although more is received than what is given, this happens by the nature of the exchanged good. That surplus is not incidental to the lot but is part of the lot of the buyer. Similarly, more is received than what is given in those possessions that are bought hereditarily for an indefinite period. These comments should suffice concerning things that are sold and purchased for a specific time.

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Giles of Lessines – De Usuris In Communi Ch 1 to 3 – GPT4 Translation

Posted on [October 9, 2023](#)

Source: <https://www.corpusthomisticum.org/xtu.html>

Chapter 1

Since human knowledge proceeds from signs to things and from the sensible to the intelligible, as experience teaches and philosophical authority confirms, and a small error at the outset can lead to a significant error in the end, those wishing to know the truth about usury must first understand how the term is used by authors. Because words are signs of things and we cannot carry the things themselves with us in a debate about their truth, using these words in place of the things, we need to know what these terms mean.

According to grammarians, the term “usura” (usury) comes from “usus” (use). At its most basic level, it refers to something acquired through the use of something else, much as “rasura” comes from the act of scraping, and “tonsura” from the act of shearing. But since the grammarian is mainly concerned with the signs and not so much with the things they signify, but with the manner of signification, such as sometimes through the mode of substance or the mode of action, words are sometimes used by physicists more specifically to refer to certain things within a category. Because words don’t always capture the full range of things in the world (art does not equal nature), sometimes a single word can be used in multiple ways, leading to equivocal uses of terms. Sometimes a word that generally and universally signifies something is determined by the physicist to refer to a particular thing, either through some similarity or even its opposite.

The term “apostle”, for instance, comes from the act of sending but is determined by theologians to refer specifically to Christ’s chosen ones, and even more specifically to Paul. By “physicist” or “philosopher” we mean someone who contemplates things, whether naturally, mathematically, or theologically. A “logician” looks at speeches and

signs. In this manner, the term “usura” is taken by natural or moral philosophers and divine authors to designate something specific arising from the use of things, based on a particular manner of using the thing.

However, as every thing that is used by man, by natural law, diminishes more than it grows — most evidently seen in the case of money — “usura” in its proper sense refers to what is gained through the use of money. This is why philosophers say usury is something acquired by the use of money. The Psalm 14 says: “He does not put out his money at usury.” But theologians, considering the reasons for what is just and unjust and looking more deeply into the terms, extend the term’s meaning to include gains from the use of all things, not just money. Thus, scholars call “usury” any surplus value of any kind of thing that arises from its use, similar to that from which the term “usura” originally derived, as seen in Ezekiel 22.

Therefore, at its root, the term “usura” signifies the profit gained from the use of money. More broadly, it can mean the surplus produced by the use of anything, combined with the use of money. Sometimes this surplus arises from use that goes against the law, and other times from lawful use. The term “usura” in the Scriptures can mean different things. Sometimes it’s negative, as when it arises from illegal use; other times it’s positive, as when it arises from legal use. The term can be understood in a spiritual sense more than a corporeal one. But there’s also a way in which “usura” refers to the surplus of physical, temporal things, in which case it refers to a kind of vice related to greed, which gives rise to desire, the root of all evils. According to this understanding, usury is commonly condemned by scholars.

From this, it’s clear what the term “usura” signifies and the various ways it is understood by sacred scholars.

Chapter 2

Now, turning our investigation to that meaning of usury which signifies the surplus or increase of physical or temporal goods, let us discuss its primary subject matter, its types, and its modes. According to authorities, its primary subject matter is determined by three conditions: for everything that comes into human use, being determinable by number, weight, and measure, is properly and essentially the subject of usury. And here is the explanation.

It has already been clarified that the term “usury,” as employed by scholars of sacred doctrine to condemn, signifies surplus or increment arising from the use of something. Since surplus is an excess relative to some moral fairness or equity, it is imperative that the moral fairness or equity be determined in things from which the surplus arises, which is called usury. For if the very things from which the condemned surplus is said to arise were not determined with respect to fairness or equity, then neither could the surplus itself be determined as unfair or inequitable.

Goods that come into human use can only be determined as fair or equitable in three aforementioned ways: namely, by number (through which equality and inequality are generally determined in all discrete items); by measure (by which equality and

inequality are commonly determined in continuous items as they come into human use, such as wheat, wine, oil, and the like); and by weight (by which equality and inequality are specially determined in other items that cannot be so readily equated and divided by number or measure, especially metals and money).

No other methods, neither more nor fewer, can be used to determine the equity of things that come into human use. Every such item is either distinct and discrete from another or not. If it's discrete, then it necessarily must be determined equitably through numbers. For example, to determine equity between a house and a bed, which are discrete from each other, one must assign a numerical value to the worth of each. If, however, items are not distinct, then they can be determined in terms of equity only in two ways: either by a specified measure, like when an item has a divisible and manageable quantity (such as fields, cloth, and crops); or by an equal weight, like when an item's worth is chiefly measured by its weight (such as copper, iron, tin, gold, and silver).

Therefore, because the surplus that authorities call "usury" speaks of an excess in relation to fairness in items that come into human use, it is essential that the subject of usury be known and determined by these three aforementioned criteria. From this, it becomes evident that not only money or coins are considered the subject of usury, but also all items that can be determined by number, weight, and measure and that come into human use. This is why Scripture in Deuteronomy 23 says, "You shall not charge interest on loans to your brother, interest on money, interest on food, or interest on anything that is lent for interest."

There are commonly two types of physical usury according to the law: one that is generally called "loan interest," which arises solely from the loaned principal; the other called "interest on interest," which is more accurately termed "excessive interest" and even renders a person infamous. This type of usury is called "interest on interest" because even the interest accrued on the principal can, in turn, bear further interest relative to the principal's proportion. There are also two modes of usury, apart from the aforementioned, condemned by law: one was called "hundredth," which was equal to the principal annually; the other was called "half-yearly," derived from "half" and "whole year," because it yielded only half of the principal annually. Concerning these, reference can be found in the 47th distinction, chapter: "since many."

From the above, it is clear in what matter usury arises, and what and how many are its types or modes according to authorities.

Chapter 3

Now, while we observe that there are particular excesses resulting from many things which neither hold the name nor the vice of usury, such as those things that multiply from seeds, and also those which some gain from human labor and just contracts, it is time to explain the actions through which and in which the excess of things takes on the name and vice of usury.

Primarily, the excess that bears the name of usury arises from and through the act of commutative justice, which involves giving or receiving a loan. This is first proven by the teachers of Sacred Scripture. For it is read in Exodus 22, "If you lend money to any of my people with you who is poor, you shall not be to him as a creditor; neither shall you exact interest from him." Also, in Deuteronomy 23, "You shall not charge interest to your brother, whether interest on money or food or anything that can be charged interest."

The reason can be explained thus: since usury refers to an increase arising from the use of something, it must be noted that for any good possessed by a person, there can be two types of use, as mentioned in the first book of Politics. One, the actual use of the thing itself, whereby it serves human necessities; for example, the wearing of a shoe. The other is not the proper use of the thing itself, but a use where the thing is exchanged to acquire another thing. For instance, trading a shoe through sale or barter to acquire money or another item.

Since the first type of use serves human necessities and all things were made and created for human benefit, any increase from such use is naturally good and not wrongful. Therefore, wrongful excess, or usury, does not arise inherently from this kind of use. It follows that the usury must arise from the second type of use, which involves exchanging one thing for another. This exchange can happen in two ways: either it serves its proper purpose, or it doesn't. If it does, then there's a proper way of carrying out the exchange. This can be through pure generosity, as in a gift, or through a just exchange, as in buying, selling, or bartering.

When things are freely given without expectation of return, there's naturally nothing reprehensible. But any excess arising from uses that deviate from their proper purpose or method is usurious. Therefore, the essence of usury, as condemned as a vice, does not lie in the purpose or end of a thing's use. For someone can seek usurious profit or even steal to obtain life's necessities. Such a person is not excused from the vice of usury or theft. The vice of usury arises from an improper method concerning some use of things.

Moreover, the excess arising from a loan due to the nature of the loan corrupts both the modes of proper exchange simultaneously. An excess arising from a pure gift doesn't bear the vice since it doesn't undermine generosity. Similarly, an excess resulting from a just exchange doesn't bear the vice of inequality. However, the very excess that arises from a loan corrupts both generosity and justice. It corrupts generosity because, by the nature of a loan, it ought to be given freely. This is indicated in Luke 6, "lend, expecting nothing in return." Also, justice is corrupted because in a loan, the return of what was given is expected. Therefore, where more is returned, inequality arises.

From this, it becomes clear that the vice of usury, as understood by the teachers, primarily and inherently exists in the act of lending concerning the exchange of things. This vice appears as condemnable excess arising from the use of things. However, the likeness of this vice is also found in other contracts, through some resemblance of excesses to this vice, which will be discussed later.

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Cajetan – Summa Theologica Q 61, A3 – On Commutative Justice and Contracts – chatGPT Translation

Posted on [November 29, 2023](#)

Aquinas:

Voluntariae autem commutationes dicuntur quando aliquis voluntarie transfert rem suam in alterum. Et si quidem simpliciter in alterum transferat rem suam absque debito, sicut in donatione, non est actus iustitiae, sed liberalitatis. Intantum autem ad iustitiam voluntaria translatio pertinet inquantum est ibi aliquid de ratione debiti. Quod quidem contingit tripliciter. Uno modo, quando aliquis transfert simpliciter rem suam in alterum pro recompensatione alterius rei, sicut accidit in venditione et emptione. Secundo modo, quando aliquis tradit rem suam alteri concedens ei usum rei cum debito recuperandi rem. Et si quidem gratis concedit usum rei, vocatur ususfructus in rebus quae aliquid fructificant; vel simpliciter mutuum seu accommodatum in rebus quae non fructificant, sicut sunt denarii, vasa et huiusmodi. Si vero nec ipse usus gratis conceditur, vocatur locatio et conductio. Tertio modo aliquis tradit rem suam ut recuperandam, non ratione usus, sed vel ratione conservationis, sicut in deposito; vel ratione obligationis, sicut cum quis rem suam pignori obligat, seu cum aliquis pro alio fideiubet. In omnibus autem huiusmodi actionibus, sive voluntariis sive involuntariis, est eadem ratio accipiendi medium secundum aequalitatem recompensationis. Et ideo omnes istae actiones ad unam speciem iustitiae pertinent, scilicet ad commutativam.

Voluntary exchanges are said to be when someone voluntarily transfers his property to another. And if he simply transfers his property to another without any obligation, as in a gift, it is not an act of justice, but of generosity. However, voluntary transfer pertains to justice insofar as there is something of the nature of obligation in it. And this happens in three ways. One way is when someone transfers his property to another simply in exchange for another thing, as happens in buying and selling. The second way is when someone gives his property to another, granting him the use of the thing with the obligation of recovering the thing. And if he grants the use of the thing for free, it is called usufruct in things that produce something; or simply a loan or a loan in things that do not produce anything, such as money, vessels and the like. But if the use itself is not granted for free, it is called renting and leasing. The third way is

when someone gives his property to be recovered, not by reason of use, but either by reason of preservation, as in a deposit; or by reason of obligation, as when someone pledges his property, or when someone guarantees for another. However, in all these actions, whether voluntary or involuntary, the same reason for receiving the mean according to the equality of compensation applies. And therefore all these actions belong to one species of justice, namely to commutative justice.

Cajetan

In the third point, note five things. Firstly, that exchanges are called voluntary because both acts, namely giving and receiving, are done with the intention of exchanging. For the one who buys, borrows, or sells, leases, and the like, gives what they give with the intention of exchanging it for something else, such as a price or the same thing at another time. They are called involuntary, however, because the other act, namely, the act of causing harm, both actively and passively, that is, both by the one causing harm and by the one suffering harm, is not done with the intention of exchanging. For the one who steals, strikes, reviles, or does something similar does not do it to return something equivalent to them, and the one suffering harm is not subject to any exchange. Therefore, only the other act, namely, the act of giving back, is done with the intention of exchanging for the harm. Between voluntary and involuntary exchanges, the difference is that the former have the nature of an exchange in both acts done willingly, while the latter have it in only one act. From this, it follows that in the former, the nature of the exchange is voluntary on both sides, while in the latter, the nature of the exchange is involuntary because it is against the will of the one causing harm. The nature of an exchange cannot be preserved in only one extreme; rather, what is exchanged must be exchanged with the other, and what is exchanged becomes that for which it is exchanged. But the relation of exchange in the act of causing harm becomes against the will of the one causing harm. Therefore, exchanges of this kind are called involuntary.

Secondly, exchanges are distinguished as voluntary or involuntary because they vary in the justification. In voluntary exchanges, there is only one justification, namely, the thing that is given; but in involuntary exchanges, there are two justifications, namely, the harm and the injury that occurs against the will.

Thirdly, involuntary exchanges are further distinguished into hidden and manifest, because there is a different justification for the involuntary when it occurs secretly and when it occurs openly. For when someone suffers harm secretly, it is involuntary as if due to ignorance, according to the saying, "If the head of the household had known at what hour the thief was coming, etc.;" but when it is suffered openly, force is employed, and thus it is involuntary through violence. Furthermore, even though injury is inflicted on the victim in both cases because it goes against their will, when the aggression is manifest, a certain dishonor is imposed on the victim, which is not imposed in hidden cases. When evils are inflicted upon us openly, we are despised, and our dignity is not maintained, as opposed to when the offender seems to have our dignity when offending us secretly, as is evident in insult and defamation, robbery, and theft.

Fourthly, in the letter, exile and usury are not included among involuntary exchanges, not because they are outside this category, but because they pertain to enumerated things in the letter. Exile, indeed, belongs to incarceration due to the confinement of a place, by which one becomes an exile. Usury, on the other hand, pertains to unjust selling: for either the same thing is sold twice, or something that does not exist is sold, as is evident in the treatise on usury below.

Fifthly, the number of exchanges in the letter and in Book V of the Ethics is not consistent. Some exchanges are enumerated there, such as the diversion of water and bondage, which are not enumerated here; and vice versa, some are enumerated here, such as mutilation and defamation, which are not expressed there. The reason seems to be that neither intends to comprehensively enumerate the species of exchanges, but to distinguish them in such a way that one can easily perceive all the species of exchanges from what is enumerated. For from both what is said there and what is said here, it is evident which things should be included in these categories.

II. In the same third article, a doubt arises concerning the conclusion of the article, on which the Author speaks when he says that all voluntary and involuntary exchanges belong to one species of justice: namely, whether it is the most specific species or a subordinate one. The reason for the doubt is that in Book V of the Ethics, Aristotle distinguishes particular justice into distributive and commutative, and commutative into two parts because exchanges are twofold, namely, voluntary and involuntary. The multitude of opposing vices also seems to attest to the same: for homicide, robbery, theft, insult, defamation, etc., are opposed to this justice. However, this letter seems to argue the opposite.

To this, it is said that since commutative justice formally consists in the equality of one thing to another, and the act of commutative justice is to give or return an equivalent, and none of these varies except materially by returning an equivalent in such or such a material; it follows that due to the diversity of material, the species of commutative justice is not multiplied.

However, it could most clearly appear that the species of justice giving an equivalent in voluntary exchange might vary from that giving an equivalent in involuntary exchange, so that one species of justice pertains to giving an equivalent in voluntary transactions, for example, in sales, and another pertains to giving an equivalent in involuntary transactions, for example, in robbery. This is because the formal difference of exchange intervenes here. But if someone considers that the divisive differences of a genus and the constitutive differences of species must be differences in themselves and not by accident, and that differences in themselves are those that diversify the genus, as is evident in Metaphysics Book VII; and that the adequacy of one thing to another is not diversified by the fact that it is given voluntarily or involuntarily (for the same amount is given voluntarily and involuntarily according to the same form of equality; only the adequacy of one thing to another is considered in both cases); they will see that this difference concurs by accident with the opposite.

As for Aristotle's statement, it is said that he did not say there were two species but two parts, not due to a formal difference in virtue but due to a notable material difference. This is because in one, two things are to be reciprocated, while in the other,

only one. In voluntary exchanges, only the thing itself needs to be equated, whereas in involuntary exchanges, harm is the offense because it is against the will, as mentioned before. However, whether one or two things need to be equated does not alter the species of the equation, as long as the same form of equality is maintained, as it is in these cases.

Moreover, the multitude of opposing vices is not a sign of the multitude of the opposing virtue, since evil arises in various ways and from individual shortcomings, while good does not but comes from an integral cause.

Therefore, commutative justice is one very specific species. Similarly, distributive justice is another very specific species, for the same reason. This is because each operates its own unique form of equation, formally distinct from the equality in commutative justice, as is evident from the above.

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Cajetan – Summa Theologiae II-II, q. 78 – chatGPT Translation

Posted on [November 1, 2023](#)

ST II-II, Question 78, Article 1

In the first article of question seventy-eight, a doubt arises concerning the rationale of the letter by which usury is proven to be a sin. Some argue that the reasons are not effective. Because it is false that in such lendable goods, the use does not differ from the substance of the thing: for in all things it differs, just as operation differs from nature. – And because the reason that money is primarily for the sake of trade does not apply to other lendable goods, such as wine, wheat, etc. Therefore, the letter does not effectively conclude the intended meaning. To this it is said that both objections proceed from a misunderstanding of the letter. And the first indeed: for whether use and thing differ or do not differ, can be understood in two ways. First, according to the being of nature: and this is outside the proposition. Second, in relation to exchanges: and this is to the point, where the matter concerns the justice and injustice of exchanges. Therefore, although in the being of nature, wine and the use of wine, such as drinking, are distinguished; nevertheless, in relation to exchanges, wine and its use are counted as the same, and neither can be sold separately from the other. And it is similar in other such cases. And this was evident in the letter, saying, not that they are the same, but that the use of a thing should not be separately counted from the thing itself.

The second objection is because the Author does not make two arguments, as the objector interprets, but one: and under that universal premise, namely, in things whose use is consumption, he includes the argument that money, according to its principal use, is such a thing, namely, something whose use is consumption; and he proves this because its principal use is to be spent in exchanges, according to Aristotle. Hence it is clear that the rationale of the letter remains solid and effective.

II. In the response to the second and third objections, note that, while staying within the limits of divine and natural law, it is permissible to enact permissive laws regarding usury: not for the profit of the rulers which they receive from usurers, as that would be to participate in crime; but to avoid a greater evil, such as theft, etc., just as it is lawful to enact permissive laws regarding prostitutes, to prevent adultery. Nor are such laws unjust. Hence in the letter it is said that the Law of Moses was such, and it is clear that it was not unjust. But note that there is a difference between enacting a law that usury may be committed with impunity, and another law stating that usury may not be reclaimed. It is possible to have the first law without the second: that is, that a usurer may not be punished by a secular judge; and yet, he may be sued as a debtor. For the Law of Moses, allowing usury from foreigners, does not forbid its reclamation, but grants impunity. Similarly, civil laws deem usury lawful, as the Author says in the letter.

III. In response to the fourth point, where the question concerns the hope of the lender, a doubt arises whether the hope of gaining something beyond the principal constitutes usury. And there is reason to doubt because when the sole hope of gaining something beyond the principal stands to receive something beyond the principal given freely by the one who received the loan. And if it were usury, he would be obliged to make restitution. But since he is not obliged, it follows that it is not usury. – On the contrary, however, common authority seems to dictate otherwise.

For clarity on this doubt, two things must be considered together; namely, about sin, and about restitution: whether it is the sin of usury; and whether one is obliged to make restitution. And since sin of the heart and of the deed are of the same kind, because to do and to desire something are interchangeable in goodness and malice, it should be known that desiring something beyond the principal can occur in two ways: first, from the loan, that is, because of the loan; second, not from the loan, but from the friendly goodwill of the one to whom it is lent. And if indeed something beyond the principal is hoped for in this second way, it is clear that it is not the sin of usury: because nothing from the loan, that is, is hoped for. – But if in the first way, a distinction must be made. Because either something is hoped for from the loan principally, or secondarily. If principally, it is the vice of usury, against the Lord's commandment, hoping for nothing from it. If secondarily, it is not the sin of usury, as the Author says in *Qq. de Malo*, q. xiii, art. ult.: because it is lawful to have a left eye to benefit from the good that one confers on a neighbor from one's own resources. However, this secondary respect occurs when someone lends expecting nothing for the loan, but expecting from the gratitude of the one to whom he lends that he will not be ungrateful, but as he does a favor by lending, so the other, grateful, will reciprocate either by relending, or by serving, or with small gifts according to his condition, not to pay usury, but to show himself grateful freely. For the lender is owed, by reason of the loan, both the thing that is lent and granted for the loan itself; and gratitude, for the lender's freely given affection. And therefore, hoping for both with their effects, he does not sin.

Nor should you think me forgetful of what I wrote in the *Quolibets*: because it is the same opinion, although I use different words, and express it better here. – Nor be deceived into thinking that it is a sufficient sign of a usurious mind that one would not lend if one believed the other would be ungrateful. For it is a deceptive sign in the forum of conscience: although in the judicial forum it might carry much weight, and

doctors sometimes use it as a messenger of a perverse mind. For it is certain in a stricter matter, namely in simony, it is written by the Author in the Quolibets that one who goes to a church for distributions, otherwise not going then, is not a simoniac. And it is similar in the present case: because the expected remuneration is not the reason that one lends, but it is the condition why one lends more to this person than to that, because this one is grateful, that one is not.

And since to do and to desire, as has been said, are of the same reasoning, if someone not only hopes for these things internally, but also demonstrates such hope externally, that is, a hope that is so moderate as has been described, and follows the effects of gratuitous remuneration as we have outlined, there is no sin of usury. Hence, in the following article, the Author says that if the borrower receives something not as demanding, nor as if from any silent or expressed obligation, but as a gratuitous gift, he does not sin; and he speaks of civil obligation, by which one is bound to a debt as just; not, however, of the obligation by which one is bound to a debt out of honesty, according to which he who has received the favor of a loan ought to repay, beyond the loan, a gratuitous benefit that is equal or greater, according to Aristotle's teaching. But the reason why the doctors speak so cautiously is that they fear the frauds of men, who are prone to evil, and that something might be sought either directly or indirectly, because in the external forum they would be suspect: since the will of the neighbor who is said to be grateful is unknown, and it is thought that he repays as if redeeming his own trouble.

IV. No restitution is necessary when the aforementioned conditions are met. However, due to the variety of cases that may arise, understand that compensation can vary in four ways beyond the principal amount without an explicit or implicit agreement: solely on the part of the lender; solely on the part of the borrower; on the part of both; or on the part of neither. Starting with the clearer cases, when the intention is corrupted on the part of neither, such that neither the lender has a bad intention of gaining, nor does the giver have any coercion, but gives entirely willingly and freely, there is no sin at all, as is evident; and no restitution is required.

But when the intention is corrupt on the part of both, the lender because he absolutely wants something beyond the principal in any way, and the borrower because he sees or thinks he cannot otherwise help himself except by giving (and thus is passively bad, because he suffers, not because he does evil), the sin of usury is present, and he is obliged to make restitution: because the loan is principally expected, and is given not voluntarily. And in this case, the chapter "Consuluit", Extra, de Usuris, concerning the restitution of usury without agreement, is to be understood.

However, when the intention is corrupt solely on the part of the borrower, because he does not give willingly what he gives, while the lender, in his innocence, believes it is given to him freely: the borrower does not sin in receiving, but is obliged to restore it when he later knows this, if he has become richer from it. For if he has consumed it as something additional and not accounted for, he is obliged to nothing, and the one who gave it should blame himself; and it should not be imputed to the one who has always acted in good faith, and has not become richer from it. For if he had become richer from it, he would be obliged to return what is not his, not because of the acceptance, but because of the thing received; because it left the owner involuntarily.

However, when the intention is corrupt solely on the part of the lender, he certainly sins mortally, but is not obliged to make restitution, as some say. Because restitution is ordered so that he who has less than what is his, may recover what is his. Now, he who gave has nothing less: because what he gave, he did not give unjustly, but freely renounced; nor is it taken from him, but he gave it willingly. Therefore, it is not to be restored. – But if we reflect on the rules of restitution discussed earlier, when we were treating restitution, with doubt, it will appear quite clearly that this reasoning concludes that it is not to be restored to the one from whom he received it: but not that it is not to be restored absolutely. And the reason is because we have taken as a rule that when the acceptance itself is unjust, so that he who receives, receives against the law, he should not retain it for himself, but should convert it to pious uses. For it is clear that in this case, although the giving is good, the acceptance itself is usurious and against the law of both Testaments. Therefore, he who received cannot retain it, but must restore it to pious uses. And this is confirmed: because to be bound to restitution, it is sufficient that one is obliged by reason of unjust acceptance, even if he is not obliged by reason of the thing received; but in this case, he is obliged by reason of usurious acceptance.

Article 2

In the second article of the same seventy-eighth question, know that two notable rules are handed down in the text. One is: To demand something valuable in money for the sake of a loan as a debt due to an obligation or agreement, tacitly or expressly, is usury. The other is: To demand for the sake of a loan and to require goodwill, and whatever is due out of goodwill, is not a sin, but is permissible. And since it is very important to know these rules in general, and to know whether or not to apply them to particular cases, since from this many false solutions seem to arise; therefore, in order to advise the weaker intellects of many, cases must be brought forward, albeit summarily, from which we easily believe the rest can be satisfied.

So these questions are asked. Whether a lender to a peasant to cultivate the lender's field, keeping his just wage safe, is a usurer. – And whether a lender to someone to go to the oven, mill, schools, workshop, and the like, of the lender, keeping likewise his just wage safe, is a usurer. – Whether a lender to a community so that, during the loan, it is not obliged to the collections to which others are obliged, is a usurer. – Whether a lender to a prince to give or sell the lender such an office, is a usurer. – Whether a lender to receive from the one to whom he lends the debtors or property of the lender, is a usurer. – Whether a lender to a sailor to transfer the risk of the loan to the borrower who will profit from a safe journey, is a usurer. – Whether a lender to a persecutor so that he does not harass the borrower, is a usurer.

If these are brought to the examination of the said rules, they are easily solved. For from the fact that whatever is valuable in money is demanded for the sake of a loan from civil obligation, it is usurious; and it is clear that the obligation to cultivate the field with a just wage, and likewise to cook in this oven, to grind in this mill, to visit these schools, to buy from this workshop, not to impose these collections on me, to give or sell an office, to accept debtors or saleable goods, to pay a contract of insurance, is something valuable in money, no less than the obligation to relend: it follows that usury is in all the aforesaid and similar cases, except the last, to lend so that from a tacit or express agreement such obligations arise. Nor should we wander

outside to see if some profit beyond the principal comes to the lender: for the profit beyond the principal is readily available, namely the very obligation to do these things. And the penultimate case seems to be literally the first case posed in cap. Naviganti, Extra, de Usuris.

In the last case, however, regarding a mutual agreement made with a persecutor, if the persecution is unjust, it is clearly evident that one is to redeem their own vexation: nor does any profit accrue, but there is an obligation to not harm, to which the persecutor is held, if a judge were present who could compel, etc. If, however, the persecution were just, and mutual love were required, and in the meantime, the mercy of the prince, who can show mercy through love: since these things are not estimable in money, it would be allowed, according to the second rule; just as it is also allowed to demand goodwill from him whom I justly or unjustly offended, for the same reason. And not only is it allowed to demand the goodwill itself out of a mutual agreement, but whatever results from goodwill, however precious, is a gift: as the letter expressly says in response to the third question. From which it is evident that if anyone lends demanding goodwill; or out of a benevolent affection, not as if out of an obligation or a tacit or express agreement, does the aforementioned things, namely, cultivate the field, and come to the mill, etc.: it is not a sin.

However, avoiding both methods, and reducing the contract of loan to a condition, that is: I lend to you until you come to my mill, until I have a service from you, until you have cultivated my field, and the like, let them first know that, although from the form of the contract there is only a determination of the time of payment, and consequently no injustice intervenes, but the grace of expectation; yet if it happens that there is as if a tacit agreement obliging to these things until he has paid, it is usury. And note well that these accompanying reflected actions are sometimes suspected of usury, as has been said, and sometimes inexcusable: as when someone lends accepting bad debtors of the lender or goods difficult to sell, saying not on account of the loan does he demand such acceptances from him to whom he lends, but, since he is not bound to lend to this man, he does not wish to lend unless accepting upon himself such rights or such goods. For this is nothing else but to say: I do not wish to lend unless willing to suffer damage for my benefit, which is usurious. And the same judgment applies to similar cases. For these are inventions of those disguising their contracts, by which they oppress those seeking a loan from them, responding: I will lend you five hundred in money, and five hundred in such rights or goods: and thus they mix a loan with a forced purchase on account of the loan of five hundred in reality. And they commit two evils: the first is that they compel to buy on account of a loan; the second, that even in goods the petitioner is damaged thereby. And the first indeed always, the second however often happens. Therefore it is not allowed, even if he compelled to buy very good, easily sellable goods: because the very obligation to buy, or the obliged purchase, is an increase of usurious wickedness.

II. In response to the first issue, two main points are discussed concerning the questions on the topic of usury, namely, actual damage (*damnum emergens*) and lost profits (*lucrum cessans*). Rules are provided for each of these points. The first rule is that actual damage incurred from a loan can be claimed from the borrower: because one should not incur damage from the benefit of a loan. The second rule is that lost profits, arising from the inability to profit from the money that was loaned, cannot be claimed: because one should not sell what they do not have, and there can be various

impediments. Since whatever is claimed in terms of interest can be reduced to these two points, it is necessary to apply these rules to cases, and to show what is just and unjust based on them.

From the first rule, note two key terms: firstly, that damage refers to something that one has or ought to have; secondly, from a loan, meaning that the damage arises from the act of lending or from a pending loan. From this rule, it follows that a seller who incurs a loss in selling a field to provide a loan can justly seek compensation for such a loss. Similarly, if someone borrows money at interest to help another, they can justly protect themselves from loss (although this is more akin to being a partner in a usurious transaction, strictly speaking, it is more proper to accept or retain such money under the name of a loan, according to the truth). Similarly, if someone incurs a loss to provide a guarantee for a debt, which is interpretatively equivalent to lending money to the debtor for whom one has stood as guarantor, they can justly seek compensation for their loss. And since the loss of something owed to oneself is considered a damage, payments made to satisfy taxes or levies imposed or to be imposed by a prince or community according to the principles of distributive justice should not be considered as damages. Nor is avoiding such a loss considered as a relief from payment: since a subject is not entitled to relief from this burden, rather they are obliged to make such payment. Therefore, relief from such a burden should be considered as a gain, just as if one were released by a creditor from a debt owed to them. And I say this so that you are not deceived by those who think this is a way to avoid loss: for it is clearly evident that not paying what one owes is to gain that debt. Damages incurred due to delay by the debtor in repaying the loan after the due date should also be considered under actual damages, if the creditor has to take out a loan at interest to attend to their affairs, and whatever interest they pay can be claimed from their debtor, provided they have notified them that they will incur such a loss if the payment is not made on time. For this is truly a loss resulting from the detention of the loan against the will of the lender, known to the borrower.

And the same judgment applies to similar cases mentioned above.

III. However, concerning the second rule, a doubt arises, as mentioned previously, because it seems false and contrary to the Author. Indeed, it is false, as it is established according to everyone that after a delay on the part of the debtor, it is allowed to ask for compensation not only for the emerging loss, but also for the lost profit. Therefore, it is permitted to demand compensation for the loss incurred from not profiting from money.

Moreover, according to many, it is permissible for one who wishes to expose their money to trade, or to buy a field with it, as much as the profit is estimated, deducting expenses, that one would have had elsewhere. Therefore, the rule stated is not absolutely true.

And lest we err in particular cases, ascending to reason, it is shown that this rule contradicts the principles of restitutions, proceeding as follows: One who has money has profit in potential, more or less proximate to act according to the nature of the trading opportunities that arise. Therefore, the lender can stipulate in the agreement compensation for the loss incurred from not profiting from their money.

The antecedent is proved in multiple ways. Firstly, because money is an instrument for profiting, when an industrious trader or buyer of fruitful things uses it. Secondly, because otherwise, it would not be necessary for the debtor after a delay, or any other holder of someone else's money, to restore anything more than the quantity held. The opposite is held and was dealt with above, when discussing restitution. For this reason, according to the form of commutative justice, something more is owed, because the creditor is harmed in some way more than the detained quantity; otherwise, the equality of thing to thing would not be preserved. – And it is confirmed: One who has money either has something more than the quantity of money, or not. If they have something more, it follows that they can sell and stipulate in the agreement. If not, it follows that after a delay, no more should be owed: because nothing should be restored but what was taken; but by detaining, nothing more than money is taken away, because nothing more is contained there, according to this response. However, it is clear that this is false, namely, that no more should be restored after a delay. Therefore. – If it is said that more must be repaid after a delay because the owner is hindered from using their property, the response is clear: that in money, hindering the owner from the thing and from the use of the thing is the same; hence, nothing more is owed for use. – If it is said that it is detained against the will of the owner, the response is clear: that this is not on account of interest or on account of the thing, but on account of the injury that is done from it being detained against their will; however, our question is not about the satisfaction of injuries, but about the equality of thing to thing in commutations; on account of which the Author in the proposed case says above, in art. 4, q. 12: He who has money does not yet have profit in act, but only in potential.

However, the consequence is proven in two ways. First, because the one who has two things and deprives themselves of them for the sake of lending, can lead the restitution of both into the agreement. But this is the case in the situation presented here: this lender has two things, namely money and the power of gain or profit; and because they lend, they deprive themselves of both, namely the money and the capacity for gain. Therefore, they can lead the restitution of both into the agreement. – Second, just as in selling it is permitted to sell something for more than it is absolutely worth, if it is worth more to the seller; so in lending it is permitted to estimate the money as worth more than it is absolutely worth, if it is worth more to the lender: the reasoning is the same in both cases. But it is clear that for a skilled trader or a buyer of land, money is worth more than its absolute value; since these individuals relate to money as other craftsmen do to the instruments of their art. Therefore, these individuals can, by lending, lead into the agreement whatever they wish.

And by this the reason for the rule assigned in the letter is solved, namely that they cannot sell what they do not yet have and which can be impeded in many ways. It is solved by saying that they cannot sell it as something possessed in act, but as something possessed in potential. That this is not nothing is clear from what was said on the topic of restitution: namely, that one who has lent something in potential is not bound to restitution as if they had it in act, but to restitution as something possessed in potential, weighing the conditions, etc. Hence in the case at hand it is said that it is permitted to receive as much as, if one had been impeded from trading or buying, the impeder would be judged to owe in restitution. And thus it follows that foregone profit can be led into the agreement from the beginning of the loan by the trader and the buyer. – And it is confirmed. Because this is not to receive beyond the principal on account of the use of money: but it is to receive on account of the annexed power of

gain, which one deprives oneself of, and for which power money is worth more to me than absolutely. And therefore it is not the sin of usury: but to have reason of one's own thing as it stands under one's own industry.

And from these things it is clear that this rule, with its reasoning, contradicts the Author in the previously stated and cited passages.

IV. For the clarity of this ambiguity, upon which the foundations of true or palliated interest arise, it should be known that the whole difficulty consists in these two points: Does one who has money, say a thousand ducats, have more on account of the annexed power of gain than the quantity of the money, say a thousand ducats? And if they do not have more, why after a delay, for the sake of equating thing with thing, must more be given? But if they do have more, why is it not permitted to sell that surplus from the beginning, and why is it permitted to demand that surplus after a delay for the sake of equating thing with thing, beyond the satisfaction of injury? For these things do not seem to be in harmony with each other; indeed, they do not seem to be intelligible. – But if someone says that one does have something more and that it is permitted to sell it, the way is clearly open so that in any loan of money something beyond the principal can be demanded from the agreement. Which all deny.

The beginning of the investigation of truth is that the potential for profit from money is twofold. Some of it follows the money itself absolutely, as far as the money itself can be an instrument for gaining profit, either through the means of business or through the cultivation of fields, livestock, etc.: and this power is called the power of money, because it considers the money itself absolutely. However, some potential for profit from money follows the money not absolutely, but as it underlies a certain industry of a trader or buyer at a certain time, in a certain place, with a certain commodity, etc.: and this is called the power of money as it underlies industry. And since the first power is common to money from whoever holds it, the judgment about the money itself and its power is the same. And therefore, just as it is not permitted to receive more than the principal amount of money, it is not permitted to add anything more on account of its power: for since they accompany each other inseparably, the judgment handed down by the scholars about money is understood to be about the money with its quasi-natural power to profit. But the second power is added to money from the fact that it underlies a certain industry. And therefore, it does not pertain to the money absolutely, nor from whoever holds it, but in relation to something: and it receives more or less, according to its proximity to profit, and the quantity of business, industry, etc. And the statements of the scholars are not to be understood about this power when they speak of money. Indeed, this power can be sold, or, more accurately speaking, redeemed, beyond the principal amount.

To thoroughly understand this, it must be considered when and how this power of money applies exemplarily, for the sake of a shorter and clearer teaching. A grain of wheat can be possessed in two ways. First, absolutely: and thus, although it has in itself the potential for sowing, as far as one can use it for sowing, it is nonetheless not worth more on account of this potential than it absolutely is. And to this power in money corresponds the power of money: for just as one can use grain for eating or for sowing, so can one use money for common exchanges or for making a profit. Second, it can be possessed for sowing: and this receives increases, as it is more prepared and

ordered, closer to sowing or spreading. And to this power corresponds in money the power as it underlies industry.

Just as a grain of wheat is not owned as a seed, nor is it to be returned as seed if it was taken away, unless it was actually brought for this purpose or at least prepared for it; so money is not considered as the basis of industry, business, etc., unless it was actually to be applied. This means that just as a thief who took away grain prepared for sowing is obligated not only to return an equivalent amount of wheat but also something more in response to the seed's potential, at the discretion of a good man, according to the quality and quantity of the loss arising from being prevented from sowing; and he is not required to restore the entire produce (expenses deducted) which others, his neighbors who did sow, reaped from such sowing, because he had the fruit in potential or in power, not in act. So too, if someone had stolen money meant to be applied to trade, etc., he would be obligated not only to return the same amount of money, say a thousand gold coins, but also something more, at the discretion of good people, weighing the conditions of the business, etc.; but he is not obligated to the entire profit that he would have made, for the same reason, because he only had it potentially.

And from this it follows that merchants having money ready for a certain trade on hand, commonly estimated to be profitable with a hundred ducats after expenses, even if they could lend it to John who comes asking for the said money as a loan for his needs, and from an agreement ask for something more than the principal on account of the aforementioned potential, they still cannot ask for the entire expected profit, that is, a hundred. And the consequence is clear in two ways. Firstly, because in this case the borrower is not obligated to return more than if he had stolen the said sum from the same person: as is clear from the principle of commutative justice, which requires equality of thing for thing in both cases, and more strictly in the case of theft, because of the injury. But if he had stolen, he would not be obligated to restore the entire profit. Therefore, neither if he borrowed. Secondly, because the borrower of grain already brought to the field for sowing cannot demand the entire produce of the expected harvest. Indeed, if someone were to destroy the scattered seeds that had already sprouted by trampling them, he would not be obligated to restore the produce of the expected harvest, expenses deducted: as is clear from what has been said above in the matter of restitutions.

VI. And from this it is clear that if Raymundus and Innocentius, and whoever else, said that one who is about to transport goods to a market can sell them only for as much more as he would have gained there in profit; and similarly, one who is about to invest his money in trade or in buying, etc., can demand only as much as he would have gained from that trade or purchase: they are mistaken, with all due respect, in an intolerable error; because they assess what is in potential as if it were in act, which is against justice, because in this way a simple thing does not correspond to a simple thing, but to a simple thing multiplied, as the Author taught in question 61*. This is clear as daylight, for if one can demand something more, he cannot demand more than what a thief would be obliged to return if he had stolen the money or goods in such a state, condition, etc.

However, whether one can demand, by lending money in such a state, this something to which a thief would be obliged, according to a pact, needs to be examined. There is a

great difference between the absolute value of a thing and the value of a thing in such a state. Because the absolute value of a thing, both in terms of voluntary and involuntary exchanges, behaves in the same way: a thousand ducats, whether they are alienated by loan, purchase, theft, or robbery, always carry a value of a thousand with them. But the value of a thing in such a state does not accompany the thing outside of that state, but as soon as it is out of that state, it loses so much value. Because of this, a great diversity arises. Thus, it must be distinguished whether the thing is alienated against the will of the owner, or with the owner's consent. For if it is taken against the owner's will, it is clear that it must be restored according to the value of the thing in such a state, as is evident in the case of someone destroying seeds. But if the owner willingly sells the thing, a further distinction must be made. Either without changing the state of that thing: and thus he can licitly alienate it according to the value of the thing in such a state. And therefore, just as the owner of a sown field licitly sells it for as much as the sown field is now estimated to be worth, so the one who has money invested in trade can licitly transfer it to another, which is to transfer the trade to him, then receiving as much as is estimated for so much money applied to that trade: this is indeed to alienate money while preserving the state in which it is. – But if he wants to alienate it without preserving that state, but by removing it from the state of trade, thus he may not alienate it for more than it is absolutely worth. Since the owner himself removes the thing from the state in which it was of greater value, which he does by wanting to lend it out (for it is the will that transfers a thing from one state to another in such matters), he cannot ask for more, however little, than the principal amount.

Note here that it is one thing to voluntarily transfer property or money from a state of business; and it is another thing to suffer a loss of expected profit due to an impeded will from the business. For one who truly commits to a business or the purchase of profitable goods, directly aims for the entire expected profit or fruit, and only stops at the beginning or in the middle of the pursuit if impeded; otherwise, he either does not know, or truly does not wish to continue. However, one is impeded in their purpose not only by a thief or robber and such, but also by the arising necessity of a neighbor compelling the charity of the businessman to lend to them, and thus to lose the entire expected profit, while still keeping themselves indemnified as to what is then estimated if this business or purchase money were taken away by a thief. And therefore, in such a case, I think it is permissible, for the said reason, to demand when lending, something more than the principal.

However, one who, with the desire for lesser profit but with security, because 'it is better to have an egg today, as they say, than a chicken tomorrow,' transfers their business or purchase money to a loan, wanting from the agreement only as much more than the principal as they would be required to add if a thief took that business money, etc., is a usurer, for the said reason. And it is confirmed: because otherwise, anyone, after once exposing their money to business, could transfer it to lending with a moderate profit, as a thief would be required to do, etc.; and thus experience would commonly teach that usury would not be considered a sin.

From the foregoing, therefore, the truth of the three cases is clear. The first is, whether it is permissible for a businessman to deduct the entire expected profit in an agreement when selling or lending. Indeed, it is clear that the negative part is true: namely, that it is not permissible. – The second is, whether it is permissible for the same to voluntarily divert money from business or purchase to a loan, in order to

demand something of the expected profit or fruit when lending. Indeed, the negative part of this is also clear: namely, that it is not permissible. – The third is, whether it is permissible for the same, being impeded by an involuntary impediment to a certain extent, that is, from the arising assistance of a neighbor, to demand when lending something more, according to the value of the money in that state. Indeed, it seems that the affirmative part is true: namely, that it is permissible.

VII. Now it remains to respond to the objections. And to the first, it is said that a debtor after delay (leaving aside the injustice by which he offends the creditor by holding onto his property against his will) is not obliged to anything beyond the principal amount, except because he prevents the creditor from gaining the profit that was in the process of being obtained: as is clear from above in q. 62, art. 4, in the body of the article, joined with the responses to objections 1 and 2. For there, from the second part of the distinction, the reason for restitution after delay is given, and for the sowing of seeds: but the second part is the damaging of that which was in the process of being obtained. Hence, from this, nothing else is obtained except the third case, as is clear from the aforementioned, and more will be said.

To the second, it is said that although, according to the third case, something more can rightfully be demanded on account of the impediment, nevertheless, the entire hoped-for profit or the entire fruit cannot be demanded. Otherwise, the multiple of what is lost would be demanded for the simple. – In the likeness of a merchant wanting to transport goods to the fair, it is said that it is false that the merchant can demand the entire hoped-for profit elsewhere, for the aforementioned reason. – And if against this, a reason from a similar case is brought forth from cap. “Naviganti”, Extra, de Usuris: because, namely, on account of doubt concerning time, it is allowed to demand more than what is presently worth; therefore, by the same reasoning, on account of doubt concerning place, it is allowed to demand more: – it is easily answered that it is not similar, nor is the reasoning similar. Because there, the discussion is about a sale faltering in time with respect to one part, namely the payment, as is clear there: and therefore, there is reasoning concerning the time of payment. In our proposed case, however, the sale does not falter in place with respect to any part, since neither the thing nor the price will be assigned elsewhere.

To the first argument on the contrary, it is said that the antecedent is to be distinguished according to the double power already explained, namely the power of money, and the power of money as it underlies industry: and according to this power, the antecedent is admitted; but according to the first, it is of no worth for the matter at hand.

And thus, understanding the antecedent according to the power of money, as it underlies industry, it is proven through the first and second proof of the antecedent itself. However, the confirmation, because it speaks indistinctly of the one having money, must be distinguished, saying that the one having money can be understood in two ways: namely, absolutely, and thus he does not have anything more than the quantity of money. And when it is inferred, ‘Therefore, after a delay, nothing more should be returned to him,’ it is responded by conceding that, excluding injury, nothing more is to be returned after a delay to the creditor who is not hindered in any way from gaining profit from the money held, such as he who, having money, has it absolutely; since such a creditor has not truly suffered any loss. On the other hand,

there is one who has money under industry: and thus, having money, he has something more than the quantity of money; yet, it does not follow from this, 'Therefore, he can sell and reduce to a pact that excess,' unless the state of the money under industry is preserved: because he does not have that excess absolutely, but by reason of such a state, namely, under industry. And this is speaking regularly; otherwise it is in involuntary exchange, as was declared previously.

Regarding the consequence from the antecedent understood in this way, it is said, as has now been stated, that it can be understood in two ways: namely, preserving that state of the money; and in this way, it is conceded. Since it is lawful for one having two things to sell both, if both are safe: but not if one of them has perished. In the case at hand, however, the trader has two things. But when he diverts money to a loan, one of them ceases by his very will diverting the money from the state of industry to the state of absolute money. And therefore, it does not follow that he can sell both. – In another way, the consequence can be understood as it sounds, whether both are safe or not: and in this way, the sequence is denied. Nor does his first proof prove anything unless both are safe, as is clear from what has now been said. But regarding the second proof, which presses more urgently, it is said that, as is clear in the previous article, a thing is said to be worth more to the one selling it than absolutely, when he actually has something from which it is worth more to him, and not when he has it in potential: because, as it is said there, the seller sells what is his, not what can be his. Therefore, that loss pertains to the interest of the emerging damage: but our question is about the interest of the lost profit, which is considered according to potential. Therefore, it is not similar to the case where the seller can voluntarily sell more because it is worth more to him: and to our case, where the trader wants more by the principal because the money is more useful to him. Because there, it is actually worth more to him, but here, the utility is in potential: there, he has something more of his own, here he does not, but he can have something more of his own, since he is on the way.

Regarding the statements made for resolving the matter at hand concerning the rule*, it is answered that the rule is given for those things that should be regularly observed, and not for those things that can be done in such a case; for this pertains more to exceptions than to rules. Hence, this rule teaching that it is not lawful to deduct foregone profit in a contract from money that one borrows is very true, and it teaches what should be regularly done; and it is formal in terms of power, and completely voluntary exchange, such as lending. This is because money not only lacks profit in action, but also on the way: it has profit only in a common potential not estimable above the money itself. Also, because merchant money cannot be voluntarily diverted to a loan with an added estimate insofar as it is profitable. Hence, since neither from money absolutely, nor from merchant money, is it lawful to regularly demand something more than the principal when lending, because in the money which is borrowed there is no profit in action or on the way, but only in a common potential not estimable; it follows that the rule is excellent, and that its reasoning stands solid. – And this does not conflict with other statements of the Author. Because he spoke earlier about profit that is had on the way, and about things in which there is profit on the way, safe in that state in which they have profit on the way, so that in that state they are occupied, impeded, or alienated. – Finally, for confirmation, it is said that it is now clear that one who voluntarily diverts money from the industry of trade or buying does not demand it by reason of the money's potential under industry, because that no longer exists, he himself so willing. And therefore, he demands it only for the use. – Although this rule, and for that reason, stands that in a case such as the third case*, it

is lawful to have regard for the loss that one suffers from not being able to profit from merchant money due to an occurring impediment.

And it is clear from what has been said that although the debtor after delay is held to interest, he is not, however, held to interest if the delay was by the consent of the creditor, just as he was not obliged to pay interest from the beginning because he held by the consent of the creditor: for it is of the same reasoning to have something from another, and to be preserved by the same. Hence, the creditor cannot after the delay make an agreement so that for the rest of the future time, until the debtor has held his money, he pays only as much, just as he could not do this from the beginning: because he is not in delay who does not return by the consent of the owner. However, he can demand interest for the past time during which he was in delay.

X. In response to the fifth question, where the profit from a partnership contract is discussed, if we were to delve into the particulars of different trades and partnerships, it would be excessively complex since they vary greatly. However, formally, which is the subject of knowledge, consists of two parts. First, that the capital is subject to risk just as it is to profit. Second, that the profit is proportioned to the capital in such a way that the proper ratio of profit to partner is maintained: meaning that both profit and loss respond proportionally to each partner who contributes money, labor, or industry. Add to this a third principle, as a canon to always uphold justice in such matters: that is, from the beginning, each partner's share should be appraised, and from this, a sort of total common money pool is created, proportionate to their shares; and subsequently, both in profit and in loss, in the division of all that remains, the division is maintained as if they had invested a sum of money proportionally. For example, there are three partners: one contributes a thousand ducats, another contributes labor valued at a thousand, another contributes industry valued at five hundred. The partnership is established as if these three had invested two thousand and five hundred ducats: however, so that the third partner always stands for half. And thus, the profit is to be divided so that, if there are five in total, the third partner receives one, and each of the others two. And finally, whatever remains is to be divided in the same way, so that, if there are two thousand and five hundred remaining, a thousand is given to one, a thousand to another, and five hundred to the third. Otherwise, the one would be harmed in the loss of industry, and the other in labor, and the one who contributed money would profit. And the same applies to partnerships in animal breeding.

XI. In response to the sixth question, since it deals with the fruits of a pledge, know that the Author speaks of a pledge absolutely as a pledge: and not of a pledge for a particular reason. For it happens for a particular reason that one can make the fruits of a pledge their own, as is evident from a field assigned as a pledge for a dowry, in *Extra, de Usuris*, cap. *Salubriter*: and the reason there is assigned, because the fruits of the dowry are for supporting the burdens of marriage. Hence, the limitation that some add to this determination of Innocent III, namely, that it is understood when the dowry money was to be spent on trade or the purchase of fruitful property, otherwise interest would not apply, is false: because by reason of the burdens of marriage, which every husband, whether he trades or not, whether he buys or not, is known to bear, the fruits of the dowry are considered as his. And this is speaking absolutely. However, incidentally, it depends on whether the husband uses or does not use the dowry to produce fruits, and thus to help himself support the said burdens. And since we do not

judge about a matter according to what happens incidentally, but according to what is in itself; therefore, speaking absolutely, the husband makes the fruits of the dowry pledge his own. And he can establish this in a pact from the beginning, if he does not want to marry without a present dowry, etc.

But cities that are given by needy princes as a pledge to other princes must bear fruit for the lord who has pawned it, after deducting the expenses of officials, etc.; because the dominion has not been transferred, nor does it bear attached burdens, just like marriage. Just as universally when a pledge is accepted, it yields fruit to the lord after deducting expenses. However, princes should, if they want to make their own profits, not accept cities as a pledge, but rather buy them with a pact for repurchasing: thus they would make their own profits.

And because the fruits of a dowry are considered on account of the burdens of marriage; and when the marriage is dissolved, its burdens do not remain, since there is no burden for that which does not exist: therefore, widows wanting the fruits of their dowry as if the marriage still existed are mistaken. However, if by the statute of the city, in green observance, it is ordained that widows, until their dowry is returned to them, are assigned five or ten per cent; since this is done in favor of the weaker sex and to penalize the heirs of the husband, a woman can lawfully take this kind of pension when it does not depend on her to have her dowry returned. And the reason is because the distinct ownership of things in particular, when it is established by positive law, can, for the common good of the country, be dispensed from this person to that person by the law of the country, etc.

And by the same reasoning, if there exists a statute that a father-in-law not paying the dowry is held to his son-in-law at ten per cent until he pays, it is just. For these provisions contribute to peace among relatives, and to removing lawsuits, and to urging debtors to at least pay what they owe out of fear of penalties. However, I have said this when the widow is not the cause for the dowry to be retained by the heir. Because if the widow, and similarly if the son-in-law, was the cause for the dowry to be retained by the heir or father-in-law, they already yield to their right, and they cannot use the benefit of a penal statute in the forum of conscience against him who does not retain his dowry with the creditor unwilling, etc.

XII. In response to the seventh of the same article second, where it is treated of the increase or decrease of price in a sale to time, a doubt arises from the sacred canons. Because in Extra, de Usuris, cap. In civitate and cap. Naviganti, two in opinion, although there are three in number, cases contrary to this doctrine are set forth. For it is expressly said there that if pepper is worth five pounds now, and is sold for six pounds to time, because at the time of payment it will be worth more or less than six, it is probably doubted, the sellers do not sin now selling pepper for six to time. And the same opinion is repeated in §2 cap. Naviganti: for it is clear that in this case the expected payment in the future is the reason for the higher price. Also, at the end of said cap. Naviganti another case is set forth: that one preserving grain can sell it for more to time than it is worth when he sells it.

Ad hoc is said to be that in two ways it can happen to differ according to time, the solution from the sale. In one way, as is the action by itself separated from the

purchase: so that there are four actions there, namely sale, purchase, implicit loan waiting for the solution in the future, and the solution itself. And so the Author follows on the future solution, and says that to sell more by reason of such expectation is usury: and similarly to buy less by reason of anticipated payment, by the same reason. – In another way, as it is a consummative part of the purchase: so that just as the sale is integrated almost from two parts, namely from the contract of sale and from the delivery of the thing that is sold, so the purchase is integrated almost from two parts, namely purchase and payment of the price. And just as the sale can have its parts separated according to time, as is clear when someone sells things to be assigned in the future summer; so also the purchase can have its parts separated, as is clear when someone buys oil in winter, to pay for it in the future summer with grain. Therefore, when the payment as a consummative part of the purchase is expected, then no loan intervenes. And therefore it is said in the decretals that it is not usury: but this exchange is as if limping, or hanging to the future, as if the consummation of the purchase draws the sale to itself. And therefore, the value of the thing that is sold is allowed to be estimated by comparing the present time to the time of payment, that is, of the consummated purchase: so that it can be estimated as much more as it is believed more or less likely that the thing will then be worth, etc. And this is, in my judgment, the literal reason of those decretals as to these cases.

However, the reasoning in the last case is the same, as it is said there, insofar as it concerns what is indeed evaluated by reason of the doubt of a future higher price, then rather than now likely estimated, it is permitted for one preserving goods for sale to sell them at a time for something more than they are worth at the time of sale. And note that although the Gloss in chapter “In civitate,” along with its followers, deemed the aforementioned case in chapter “In civitate” to be decided according to this last case, namely, that in that case it is understood, if the seller was preserving; nevertheless, it is clearly proven that this interpretation does not agree with the letter of the text. This is because nothing about this condition is said there. Also because in this same chapter, “Naviganti,” in § 2, the case comes back to the same point as the case in chapter “In civitate,” and it is determined there without this conditional, if he was going to preserve. Hence it seems to me that this last case is different in meaning from those first mentioned: and that there, the value of the item at the time when the purchase is completed is considered; but here it is not (hence nothing is said about the value at the time of payment), but the value of the item in the future is considered because he was going to preserve it. Hence, even if not at a set time, but then payment was to be made, he could also have sold for more in this third case. – But note that it is not said in the letter that in this case one may only sell for as much as it is believed it will be worth: because this is false; since the future value is only in potential, and according to the rules previously mentioned, what is in potential should not be estimated as if it were in actuality: – but that one may sell for something more. And if you ask how much: – I answer, as much more as a thief, excluding injury, would be held liable if he then stole that item from the one preserving it. For it is clear that he would not be liable for the entire lost profit, as is evident from what was said before. – However, note that if here the one preserving were to sell at a time, and wanted to weigh his item for the time when he was going to preserve it, so that then also the final payment of the purchase is expected, he would make a lawful contract, as was said in the first case.

However, what we have said, see how dangerous they are, and, although not extorted, yet they are drawn out as much as they can be. And therefore they are to be regarded

more as cases and tolerable exceptions than as rules: for which reason the Shepherd of souls advises abstaining. Hence, the teachings of the Author, which give what should be done regularly, stand unopposed, as said in the first case. But the teachings in the second case, if according to his rules what is in potential is estimated as a thing, agree with the doctrine of the Author, and do not pertain to the delay of payment, but to the third case in the response to the first decided by us: because thus this is to be understood just like that of the money for trade or purchase and of the goods being brought to the market; indeed, they run in parallel, and from the same root, namely, from the potential for profit of a thing existing in such a state under industry.

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[van Roey – De Justo Auctario Ex Contractu Crediti – Page 1-8 – chatGPT](#)

Posted on [January 19, 2024](#)

“With the perceptions, which today are entangled with one another regarding the increase of wealth from one source to another, having been sown and cultivated long ago, it is necessary that we precede the historical account of that controversy with a careful examination. This is not only for the sake of the historian but also for doctrinal reasons: for the solution of the question primarily depends on the present position of the question, and this position itself has been shaped by the discussion of the question over many centuries (<). Especially the history of that controversy should be described so that, in accordance with the nature of knowledge, judgment can be passed on both the doctrine of theologians and the doctrine proposed by the supreme authority of the Church during the same period. As we proceed, we will encounter, in the historical context of each one, the Encyclical of Benedict XIV “Vix pervenit” and the Roman Decree “Non esse inquietandos.” This seems to be a truly scientific approach, by which a true and objective judgment on the evolution of the Church’s doctrine can be reached without bias and without any preconceived opinion.

Therefore, with respect to the theological and Catholic aspect of the question, this first part of the dissertation closely pertains: it is not presented merely as introductory but as an integral exposition of the subject matter. Moreover, we hope that this task will not be useless or ungrateful, if through the centuries and traveling through various regions, we have noted works, as many as could be found, written on this question.”

Introduction

From the times of the Council of Vienne (1311) until the middle of the sixteenth century, no one dared to assert with reckless audacity that “exercising usury is not a sin (i).” However, it is not necessary to note what constituted usury at that time. Usury was understood as having “its own place and location in a loan contract,” affecting other contracts only to the extent that they could be reduced to a loan, formally consisting of the inequality between what is given and what is received. The entire school of thought maintains that equity is lacking when, in a loan believed to be consumable initially in money and goods, something valuable beyond the agreed-upon amount is received by the lender for the sake of the loan itself, i.e., solely for the sake

of remunerating the use. Thus, “selling the same thing twice, or selling what does not exist” was considered (3).

This did not prevent, however, the permission for everyone or most people to make a profit from both loans and other money-related contracts, from the Middle Ages to the end of the era.

And firstly, regarding loans (*mutuum*), it happened with the progress of knowledge and the sciences that certain titles justifying lawful profit, including extrinsic and accidental damages, not to mention essential and connaturally inherent ones, were recognized (4). Indeed, in the sixteenth century, leading scholars, with the exception of Scotus, acknowledged compensating damages, such as emerging loss, ceasing profit, and the risk of fate, as inherent in the right and merit of a loan. In fact, scholars of the sixteenth century added that contracting parties could legitimately agree on remunerating the profit that would have been available to the lender if they had not actually waived it by entrusting their property to another. However, the title of ceasing profit was not without controversy, as some notable doctors of the time rejected the same title, despite the seeming uncertainty of St. Thomas Aquinas in admitting it concerning loans (i), and only in the sixteenth century, almost unanimously, under the leadership of Cajetan, was it considered as the principle of compensating for emerging loss (3). Finally, the risk of fate and the contract of insurance, by which the borrower was exposed to risk when the borrowed item was in danger, were more vehemently and belatedly debated, and this title was not unanimously acknowledged in that era (4). Nevertheless, it is found to be defended by many and even by the leading figures of knowledge, although in a manner different from each other.

With these principles established, it is evident that the loan contract, by accident, became burdensome and lucrative, although it remained by its nature and essence essentially gratuitous. This should be kept in mind for the judgment of the controversy to follow.

Moreover, if we specifically consider money, which was considered sterile in itself, there was already more than one way to bring profit: namely, through a census contract and a partnership agreement, money had been used for profit for many centuries. When both the nature and industry or labor of humans produced dual causes of wealth, their fruits could be bought and sold. The contractual census was based on this principle (1). However, the efforts required to fully develop this principle were immense! In earlier centuries, only the real census was approved, whereby the right was acquired from immovable property and productive fruits were received, whether they were naturally generated or valued in money. Moreover, it was only perpetual and not redeemable. But in the era being discussed here, the real census is commonly taught to be redeemable in part by the seller. Indeed, by the end of the 15th century, some doctors, such as Gabriel Biel (d. 1495), Conrad Summenhardt (d. 1518), and in the early or mid-16th century, such as Juan de Medina (d. 1546) and Covarruvias (d. 1577), found it established by the nature of the thing that the census contract could be redeemable on both sides. In the same vein, the notion of personal censuses emerged, relying on the labor of someone fruitful or even the entire faith that one enjoys, but not on stable and determinate ownership rights. Although, even though the Supreme Pontiffs Martin V (1425) and Callixtus III (1448) did not approve of such contracts (<), and indeed, they were expressly condemned by

Pius V in 1569, by the mid-16th century, prominent theologians and canonists like Conrad Summenhardt, Johann Eck (d. 1548), Johann Major (d. 1540), Juan de Medina, and Covarruvias regarded them as licit. Therefore, although the census contract differed entirely from the loan contract in principles, when fully evolved in practice, it seemed to yield almost the same practical effects as lucrative loans.

In addition to the purchase of a census, whether real or personal, another way in which money brought genuine profits was through a partnership contract (2). In whatever manner money was joined with human industry, a partner was established contributing their share; a legitimate partner was established as long as risks and profits were divided on an equal scale based on the things placed in common. It was widely believed that this contract was permissible when, in the early 16th century, a famous case was raised concerning it. The question was whether, with such a partnership established, other contracts, namely the purchase and sale of probable profit at a certain price, and the insurance of the risk assigned to fate, where the danger of both possible loss and the fate itself could be averted, could be added. There was no doubt about the principles and terms when considered discretely and individually. However, there was doubt about contracts so connected that what was essential to the partnership, namely common risk, was no longer imminent to one partner. Many criticized this as usury, as it seemed to yield profit and produce without any effort, expense, or risk. According to a source from 1816, the situation was as follows: "Titius, having a certain sum of money and lacking experience in business, does not dare to engage in it to avoid diminishing his estate due to his lack of skill. He cannot find annual rents suitable for him that are for sale. Therefore, with prudence and circumspection about the conservation of his property, he entrusts the said amount to Gaio, an honest and upright merchant, to make a considerable profit in his industry. He asks Gaio to conduct business with it. However, for certain reasons moving his mind, Gaio, not wanting to accept profit and loss from him, agrees with Titio to receive a fixed amount for his share of the profit, the quantity of which is uncertain, namely five florins for every hundred. An agreement is also made that it is free for both contracting parties to dissolve this partnership contract whenever they please, provided that one informs the other of this decision every fourth year." Although the greatest doctors of the time agreed on the legitimacy of cases like this, such as Gabriel Biel, Angelus de Clavasio, Eckius, Major, Cajetan, and others (1), in the mid-16th century, the debate on the triple contract, as it was called, and on personal and redeemable censuses on both sides, was still under discussion (2).

Usury, however, was considered a heinous crime, and the principles by which it was judged had never been called into question until now. Nevertheless, errors had crept into practice, and they were often widely and extensively disseminated. It is worth noting, however, that the usages that were once condemned by all or many as usury, whether rightly or wrongly, were judged according to the same primary principles (3). There was sometimes a more heated debate about whether a certain practice should be approved and on what basis it relied, or to which contract it should be reduced.

Behold the state of the question at the time when the principles of usury, admitted for so many centuries, were finally being called into controversy!

The history of this famous controversy appears to us to be divided into three periods, as three distinct stages emerge in the evolution of doctrines. The first period runs from the emergence of the controversy (around 1540) until the beginning of the 18th century (around 1730); the second extends until the disturbances at the end of the same century (in 1789); the third reaches from then until our present times.

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Cajetan – Summa Theologica Q 77, A1 – On Just Price – chatGPT Translation

Posted on [January 15, 2024](#)

In the introductory part of the seventy-seventh question, where the reason for discussing only these two types of voluntary exchanges, namely fraud and usury, is given – namely, because in other voluntary exchanges there is no specific sin that distinguishes itself from robbery or theft – a doubt arises. Hence, it has a specific distinction from theft, namely, fraud in buying and selling. The reason for the doubt is twofold: first, because such acceptance either occurs with the knowledge of the unwilling owner or without it. If it occurs with knowledge, it is not fraud but robbery; if without knowledge, it is theft, which is the secret acceptance of another's property. Second, because just as fraud occurs in buying and selling, it also occurs in other voluntary exchanges, as is evident in leasing and letting, and pledging; for one may lease a defective horse or give false security, etc. Therefore, there is no specific distinction more in buying and selling than in others, if in others these are distinguished from theft and robbery.

In response, it is said that the distinction of injustice that occurs in buying and selling from robbery and theft is evident from several perspectives. First, because such injustice is commonly done deceitfully or fraudulently, hence it is called fraud. This is not the nature of theft or robbery. Second, the unjust acceptance here occurs in a way partly unwilling and partly willing on the part of the owner; in theft and robbery, the acceptance is simply against the will of the owner. In buying and selling, both parties willingly give what is theirs to each other, making it in some sense voluntary; but because the deceived party would not give if they knew they were deceived, there is also an involuntary aspect. On the other hand, the victim of theft or robbery does not act in the transfer of their property; they only suffer. Third, because this kind of injustice commonly relates to the knowledge and ignorance of the victim. The acceptance in both theft and robbery is specific: robbery takes openly, theft takes in secret.

To the first objection, it is replied in the opposite way that unjust acceptance in selling, known to the owner but suffered due to ignorance, is not robbery because there is no violence involved; nor is it theft because it occurs with the knowledge and, in a sense, the consent of the owner. Instead, it is a specific vice that we are discussing here. However, acceptance that occurs with the ignorance of one party is not theft but involves shared fraud. It aims not to inflict a passion simply, as in secret theft, but a passion in a way arising from the victim, as mentioned before.

To the second objection, it is stated that by the term theft and robbery in this context, all the enumerated vices can be understood. The author intends to convey that there is no need to discuss any other vice in the context of other voluntary exchanges; it is

sufficient to discuss the ones listed. It is evident from the text that the author had already mentioned fraud and usury. Therefore, just as discussing theft exempts the need to specifically discuss theft occurring in other exchanges, such as someone stealing a pledge or deposit, discussing fraud in its primary context, namely buying and selling, exempts the need to discuss it occurring in pledges or deposits. The author does not mean to suggest that fraud would be theft or robbery in other voluntary exchanges, but rather that in other voluntary exchanges, there is no need to discuss any specific vice. This is because, with fraud and usury, along with the previously discussed topics like theft, etc., there is no remaining species of vice to be discussed in voluntary exchanges.

In the first article of the seventy-seventh question, a doubt arises about whether the just price of a thing is determined by how it is commonly sold in a particular place, etc., or by how it is found to be sold in a specific manner, such as when it is offered in an auction or through intermediaries. The resolution of this doubt is crucial as it affects the solution to many questions. The reason for the doubt is that if the just price is determined without considering the manner of selling, it would follow that those buying things auctioned by a public crier and sold for less than their absolute value would commonly make unjust purchases. Consequently, the rulers of the state would be implicated in unjust transactions.

On the contrary, it is argued that if the just price is determined by considering the manner of selling, it would imply that it is lawful to buy something for less than its value from those who, compelled by necessity, voluntarily sell it for much less than the common price in the same place. This seems unjust because the transaction is not entirely voluntary but somewhat forced, similar to when someone throws goods into the sea to prevent them from perishing.

II. To clarify this difficulty, three things need to be examined: first, the nature of the difficulty; second, determining the truth; third, resolving the difficulties that arise from the truth. Regarding the first, three factors converge in this case: the manner of selling, such as seeking a buyer; the reason for selling, such as necessity or something else; and a notable reduction in price compared to the commonly prevailing price. For example, this cloth is commonly sold for one hundred, but I, offering it voluntarily and seeking a buyer, cannot find anyone willing to give me more than eighty. Thus, by selling it for eighty, it is purchased for much less than its common value. From these factors, it is clear where the difficulty arises.

The manner of selling, namely, offering it voluntarily and seeking a buyer, clearly diminishes the value of the saleable item in the estimation of people. Voluntary goods, as the proverb says, decrease in value by a third. If prices are to be determined according to how things are valued by people, it seems reasonable that this manner of selling should reasonably reduce the commonly found price.

However, when the manner of selling is traced back to the reason for selling, the opposite becomes apparent. Typically, those selling for a notably lower price due to necessity do so involuntarily, as seen in goods auctioned; these are the goods of poor debtors, which are sold in that manner to satisfy the creditor with money, even if it means the poor person incurs a loss, as they have no other means of payment at the time. This is also evident in cases where intermediaries sell goods for those who bought them temporarily, not to possess them but to sell them immediately for the

necessary money, as they cannot find anyone to lend them money. These individuals buy a thousand for a just price today and immediately sell them for eight hundred or less, depending on their needs.

Therefore, the difficulty lies in determining whether the manner of selling, the reason for selling, both, or neither should be considered in this matter. This concludes the discussion of the first point.

III. Regarding the second point, know that in such exchanges, namely buying and selling, there is no need to resort to accidental elements, such as mixed donations, by saying that the seller is presumed to donate, and the like. This is because it is not true, just as it is not true in usury, even if someone takes a loan with interest without any necessity, they are not presumed to donate. Also, because what is sought in buying and selling is justice, not a gift. Take note of this well so that you do not make a mistake by saying, "He is not in need; he wanted to sell; no one forced him. He could have donated. Therefore, he donated the surplus." Apply these words to someone taking a loan with interest without necessity, as mentioned, and you will see that your argument is erroneous due to the reason provided—because exchange is involved, not a gift; justice, not generosity, is to be examined.

From this standpoint, it follows that the reason for selling accidentally relates to the just price unless it results in a greater or lesser value of the saleable item. This is because the just price is determined based on the equality of the thing to the thing, meaning the saleable item to the thing given in exchange, and vice versa. Therefore, whether someone sells out of necessity, abundance, pleasure, or disdain, the price is not increased or decreased unless it results in a greater or lesser quantity of the value of the saleable item: in a general sense when the abundance of the item makes it of lesser value; for the seller when inconvenience or necessity magnifies the value of the item to the seller, making it worth more to them, even if not in an absolute sense, as mentioned in the text.

From this, it follows that if a certain commodity, let's say a piece of silk, commonly worth a hundred in the market, is owned by two private individuals, each of whom wants to sell their piece for different reasons—one out of necessity, unable to provide for their needs otherwise, and the other, wealthy, simply not wanting to keep it at home—and both pieces are put up for sale, actively seeking buyers, and they find a purchaser only willing to pay seventy for each, and both pieces are sold at that price: if this happens, the judgment of a just or unjust price would be the same for both. If buying at such a price from the wealthy individual is not a sin, neither would selling at such a price by the needy person be a sinful act. And if buying from the needy person is a sin, then buying from the wealthy person would also be a sinful act. The reason is that there is no difference in the value of the item being sold, neither absolutely nor relatively (otherwise, any item belonging to a poor person would be worth more than a similar item from a wealthy person, which everyday experience contradicts). The only difference lies in the reason for selling, as is evident.

IV. Therefore, it seems that the whole question can be deduced from this if the very mode of selling is considered a reasonable cause for a notable reduction from the common price, in which case it does not matter for what reason someone sells.

However, in reality, although the manner of selling may be associated with such a cause of reduction, the true cause is the lack of buyers. If there were buyers willing to pay as much, or nearly as much, the item would be sold for as much as retained by the merchants. But because, at the time when someone wants to sell, buyers are lacking, it is sold for less. And reasonably so because it is normal for an item, the more buyers it has, to be valued and worth more. Hence, gems, when they lack buyers, are sold at a very low price; and when buyers are found for them, they become valuable and are sold at a notably high price. We see the same in other things: when in a certain place or time, people do not need or use certain items or cannot buy them due to a shortage of money, such items significantly decrease in value. Therefore, since the scarcity of buyers is now a reasonable cause for a notable reduction in price from the price commonly expected by potential buyers, a just price should be considered what can be found now, given the public announcement of the item for sale (to avoid hidden sales as a cause of a shortage of buyers), even if it is notably less than the price commonly expected by potential buyers.

And although this may seem clear from the presented rationale, it is also evident from commonly accepted occurrences considered just. We see that after wars and devastated cities, homeowners who cannot wait for buyers and, once things are settled and the city is restored, will be able to sell for four thousand what their homes are worth, sell them for a thousand because today they cannot find a buyer willing to pay more. Similarly, merchants at the end of trade fairs, not wanting to wait for future buyers after the fair, rent out goods much cheaper than they commonly were valued on those days. In short, when fraud and coercion cease, if something is sold for less now due to a shortage of buyers than what buyers are willing to pay now, and it is commonly known that such an item is currently for sale, it is sold and bought at a just price, regardless of the reason for selling, and those expecting a buyer tomorrow commonly sell it for much more.

If it is objected that the scarcity of buyers arises because people consider such sales unjust, the response is first, that this is not certain. Second, the number of fools is infinite, and there are few who are so fearful; hence, this cause does not seem probable. Third, it is manifestly apparent, even without the authority of the court, that there is no lack of buyers in auctions. However, the reason for the shortage of buyers seems probable because few people need that particular item at that time and have the money ready to buy it.

This concludes the discussion of the second point.

V. Regarding the third point, know that from this conclusion—that the just price of an item is what can be found now by buyers, presupposing common knowledge and excluding all fraud and coercion, etc.—many questions are resolved. These include questions about buyers who offer voluntarily, whether through auction, with or without the court's intervention; and buyers who want to withdraw and no longer wait there; or those who, compelled by necessity, cannot wait for buyers, and other similar cases, etc.

It also becomes evident from this same principle that those creating a monopoly to impose prices as they wish are highly unjust. This is because they force people to pay

more than what the item would commonly be sold for if such a monopoly did not exist—similar to forcing those in need of money, unable to find a loan without interest, to pay usury. Hence, they are obligated to restitution of the entire amount exceeding the price it would have if there were no such monopoly. They are obliged to restore it to those from whom they extorted it. Not only are they obligated to restore, but also the owners granting this, and others who are causes of such unjust exploitation.

To the opposing argument, namely that such a sale due to necessity is not purely voluntary but semi-violent, similar to throwing goods into the sea, it is responded that although such a sale has something mixed of the involuntary regarding the cause of the sale, it is still purely and absolutely voluntary. However, it is regular that if an item is sold for a just price, the fact that the sale is semi-voluntary due to an involuntary cause does not harm the transaction. This is evident in the case of someone compelled by the necessity of need selling a family land inherited from ancestors, yet selling it for a just price, and similar cases. Therefore, if the price is just, as we mentioned, the mixture of the involuntary cause does not hinder it, etc.

VI. In the same article, another doubt arises because selling something, like a field or a house, with an agreement for repurchase, and even with an agreement that, in the meantime until repurchased, it will be rented to the same initial seller, is considered permissible, as common practice attests, if the prices are just. However, it is evident that in this case, the item is sold for more than its value. For instance, if it is worth a thousand, it is sold for a thousand along with the obligation to repurchase, which is acknowledged to be assessable in money, no less than the obligation to lend, as the author states below in question following, article 2, ad 4. Therefore, it is permissible to sell an item for more than its value.

To this, it is argued that in such contracts, the item is not sold for more than its value due to two reasons. First, because commonly, items sold in this manner are valued more not absolutely, but to the seller. The seller desires this agreement because it incurs inconvenience from the sale. Therefore, the obligation of the buyer to repurchase and rent is relative to the value of the item. Thus, because the item is worth a thousand and that is the inconvenience to the seller, it is bought for a thousand with the obligation to sell and rent.

Second, because, according to positive law, there is the division and ownership of property, and custom, having the force of law, makes these agreements in such contracts considered worthless. This is to prevent fraud in usury. If a field worth a thousand were sold for eight hundred with such agreements to circumvent usury laws, it would be more considered a loan than a sale.

VII. In the closing part of the same article, the words "He who greatly benefits from something received from another, etc." indicate that money changers who have the money of others in deposit, and greatly benefit from using it in their lawful business, although not obliged by strict justice, should graciously give something to the owners of the deposits out of a sense of decency. If they graciously give for this reason, namely, that they are greatly helped by the true deposit, they act praiseworthily by giving, and the owners of the deposits can lawfully accept what is given. However, both parties should be careful not to corrupt their intentions, so that it is not considered as paid or

expected as if it were an obligation of justice. If the owner of the deposit prefers to keep his deposit with a grateful person rather than an ungrateful one, he does not sin for that reason. Similarly, if the money changer goes above and beyond to be grateful, and from this gratitude hopes that the owner will keep his deposit with him because of his gratitude, he does not sin. The reason is that the primary reason is gratitude, not an obligation implicitly or explicitly. If the money is given not out of gratitude but as a price for the use of money, it is usury.

In response to the first point, note that because a just price has latitude and is commonly distinguished as fair, moderate, and strict, many questions are resolved regarding the various prices for the same item in the same place and time when it is sold by one for ten, by another for eleven, by another for twelve, and all of them are selling justly. This allows one person to buy for ten and immediately sell the item for twelve without a guilty conscience. It also allows selling to someone willing to pay now for ten what one would only sell for twelve if paid later. And so on for similar cases.

Collegii Salmanticensis – De Mutuo et Usura – chatGPT & Gemini Translation

Posted on [February 24, 2024](#)

Collegii Salmanticensis ff. discalceatorum b. Mariæ De Monte ..., Volume 3

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Because usury arises from a loan, we therefore associate it with this chapter: and because there is little or no difficulty in mutual contracts [mutui], we pass briefly through it, so that we do not dwell longer on the difficulties that arise around usury; but it would be too far-fetched to go through all of them. We will touch upon only those which we judge to be more necessary for practical purposes. This section contains fourteen points.

I. What is a loan? Who can receive a loan?

II. What and how much is the interest [usura], and how is it prohibited by positive law?

III. Is usury inherently illicit and morally wrong by natural law?

IV. Does a mental usurer sin, and is restitution required?

V. Can someone who entered into a usurious contract in good faith retain what they received?

VI. Can a lender claim something beyond the principal based on the presumed gift? When is this presumption made?

VII. Can a lender who has a right to the fruits of a pledged item receive those fruits without counting them towards the principal?

VIII. About additional agreements in loans that go against usury regulations.

D. I. Can friendship or forgiveness of injury be deduced from a loan?

D. II. Can a borrower be obligated to repay beyond what is required by natural gratitude?

D. III. Is it usury when there is an agreement to repay the same amount of money, in kind, when it is believed to be worth more?

D. IV. Is a conventional penalty in a loan contract lawful, and is it allowed to receive something beyond the principal even if there is no profit or loss?

IX. Can a lender demand something beyond the principal due to the cessation of profit and the emergence of loss?

X. Can a lender receive something beyond the principal due to the danger in recovering the debt?

XI. Is usury present in a partnership contract due to receiving a specified profit from three contracts, while preserving the capital?

D. I. What is a partnership contract? Is it legal in business? What conditions are required? How is it defined?

D. II. What is investigated in the title punished is explained.

XII. Does a usurer acquire ownership of the property through acquired interest?

XIII. Who, besides usurers, sins and is obliged to restitution due to usury?

XIV. About penalties assigned in law against usurers.

I. What is a loan? Who can receive a loan?

“Mutuum” is said with altered letters, as if “ex meo tuum” (from mine to yours); because through a loan, I grant to you what is mine, so that it becomes yours. Thus, you can freely expend, use, consume, increase, or decrease it as you wish. It can refer to the thing that is handed over, which is more precisely called the borrowed item. It also pertains to the action of borrowing itself, as it is currently understood and defined as a contract in which a consumable item is transferred concerning ownership, and its use is subject to an obligation to later return an equivalent item of the same kind. In

this definition, the specific nature of a loan is explained, along with its distinction from other contracts, as will be evident from its further explanation.

In this definition, the contract is placed in the position of a category, and it is stated that it is a contract in which the thing is transferred. This denotes that this contract is not among those that are perfected solely by consent, such as buying, selling, leasing, and hiring; and thus, it is distinguished from them. Instead, it belongs to those contracts that are perfected by delivery concerning substance, such as donation, loan for use, and deposit. It is said to be “for consumable use” because a loan typically involves items that receive a function, where one is given, and another is substituted in its place. Thus, it typically involves things that are consumed through use, such as wheat, wine, and counted money, which is at least morally considered consumed due to the user’s comparison, even if not physically consumed. This is because, although not physically consumed, it is so alienated that it is morally deemed as consumed, as if it never existed in the natural order of things. Sometimes, however, a loan [mutuum] is also given for the use of non-consumable things, such as wood, stones, and similar items, which can be borrowed [mutuari].

It is said “concerning ownership and use,” in which it differs from a loan for use, hiring, leasing, and pledging, where ownership is not transferred. The essence of a loan is that ownership of the thing passes to the borrower; therefore, as soon as the loan is received, the borrower can dispose of it as they wish. If it perishes, it perishes for them.

3 It is added under obligation: in which it differs from a donation and other gratuitous contracts, where no burden is declared for returning anything, as is found in a loan. However, it is stated that a similar thing of the same kind should be returned: for, although the borrower may satisfy by returning the same item in terms of quantity, if they have not consumed it, they are not obliged to do so by the nature of the loan. This is because, being the owner of the thing, they can consume it, and if they were compelled to return the exact item, it would not be a loan but rather a contract of lease, loan for use, or deposit. However, it must be entirely similar according to the species for which it is obligated to be returned, such as money for money, wine for wine. For if one were obliged to repay wine for wheat, or vice versa, it would not be a loan but rather an exchange, sale, or if money were obliged to be repaid for wheat. Therefore, it must be an item entirely similar, not only in species but also in quantity and quality. Hence, one does not fulfill the obligation if they received old wine in a loan and repaid with new wine or borrowed the best wheat and repaid with inferior quality wheat. Even though they are of the same species, they are not of the same quality (L.3.ff.si certum petatur).

4. Finally, it is stated in the definition with an obligation in the manner of payment: although the borrower immediately remains obligated to pay back what he received in the loan, the repayment must not be carried out on the spot, even if no deadline is fixed; otherwise, it would not be a loan, but an exchange. Thus, the borrower is obliged to return the loan whenever he is summoned by the lender, if no deadline is fixed; otherwise, the debtor will be in default, if he does not pay. But he must not be summoned, unless some days have passed, at the discretion of wise men, considering the nature of the thing, the person, and the purpose for which the loan is taken; otherwise the loan would rather harm than benefit him. But even if not demanded, he is obligated to repay, if it is not demanded on account of forgetfulness, ignorance,

respect, or distance. If, however, the lender, even when he is able, does not demand it, he is considered to grant an extension. But if a deadline has been fixed, once that has passed, he is obligated to pay; otherwise, he will be a defaulting debtor, and must compensate the lender for any lost profits or damages arising from the delayed repayment. This is because he is the cause of them by unjust withholding; and this is true even if he has not been demanded, because that fixed date itself shouts, and summons sufficiently, as they say *Rebell. 2.part.lib.8.q.1. felt.1.n.51. Laym.*

Lib.3.felt.5.t.8.n.15.n.2. Caftro Palao tom.7. tr.32. difp.4 punct.1.num.11.

5 But you inquire, are there some who are not bound to repay a loan? It is answered in the affirmative; for if what is given as a loan to any town, or charitable institution, or Church, it is doubtful whether it was used for their benefit, they are not obligated to repay it, unless the lender proves that the borrowed money was used for the benefit of such places; a city, however, is corrupted. Authentic, this law is extended, Code, on sacrosanct Eccles. law 1. Code, on payments. Less. lib.3. cap.20. doubt 2. num.12.

Bonacina disp.3. quest.3.punit.x.num.6. Reginald. lib.25.num.176. Dicaftil- To lib.4.tract.10, difput.t.num.42.57. A minor also enjoys this same privilege, whose guardian or curator has received something on loan, which the minor, even after becoming of age, is not bound to repay, unless the lender proves that it was used for his benefit (*Law 3 Cod. quando fatto tutoris*). Our King enjoys this same privilege, when his goods are governed by administrators, as Gregorio Lop. remarks (*Law 3. glossa el Rey, sta, part 5.1 final. tit. Final. part 6*). *Rebellus de obligatione just. (2. part. lib.8. quall.t. fest.3. num. 22).* Palaus disput. 4 punt.4.1.4. Therefore, concerning all these, the following is stated in *Law 3. tit.1. part.5.* He who lent it cannot demand it, nor can he recover it, unless he can prove that the borrowed goods went to the benefit of each one of them.

6. But it must be noted that if a Prelate, with the consent of the Chapter (and the same applies to a Praetor or Governor in respect of the goods of a city), receives a loan in the name of the Church with the knowledge and consent of the Senators, for the repayment of which it is not necessary to alienate its immovable property, the Church is bound to repay it, even if the creditor cannot prove that the borrowed money was used for the benefit of the Church. This is because it is not necessary to sell off the Church's movable property to demonstrate that such a sale would be beneficial to the Church. Since the Prelates together with the Chapter have full administration of these matters, they can alienate them in such a case; and thus are obliged to repay the lenders from them. But if they cannot repay without selling immovable property, then the creditor must prove that the borrowed money was used for the benefit of the Church; otherwise there is no obligation to repay it. Unless it is clear that the alienation of such property is for the benefit and necessity of the Church, it is completely invalid. This is noted by Less. lib.4.c.20.num.13. Laym.

Lib.3.sect.5.traic.4.cap.16.num.7. Molin. Disput.300 in the beginning: and Pal. disput.4. pun. 5..5. considers it probable. And so they understand that Authentic (law), this law, Code on sacrosanct Churches, and con

7. If money has been given in a loan to sons or daughters under the power of a father, who do not have military or quasi-military property, and are not believed to be independent under the law, and have received [the loan] without the expressed or tacit consent of their parents, at least in the external forum, they are not obliged to return it before or after the death of their parents, nor are their guarantors, as is contained in law 1, throughout the title of the Code on the *Senatusconsultum Macedonianum*, and law 4, title 1, Partida 5. This was established to avoid the disadvantages which arose from loans made to sons or daughters under the power of a father, because when they saw themselves burdened by debt, they would plot the

death of their parents, so that by coming into their inheritance they might be able to free themselves from their debts. This privilege was therefore introduced in hatred of moneylenders, and in favor of parents. Thus, the sons cannot transfer it [the privilege] and if they do transfer it, they are still able to use the Macedonian exception, because no one may transfer a privilege granted in favor of others.

8. There are however some cases in which a son under paternal power, despite the Macedonian exception or that granted by law in the Code on the *Senatusconsultum Macedonianum*, is bound to repay what he received in a loan; namely if the loan is not made in money, but in other things, such as wine, oil, etc. For the law speaks of money lent, and as it is hateful and penal, it should be restricted rather than extended, provided such things received in a loan are not in fraud of the Macedonian law; for example, he received wine as a loan or grain for the purpose of selling in order to receive money; for this would be in fraud of the law, and fraud should not benefit anyone. [Citations to Lessius, Palaus, Dicatillo, Bonacina] Or if the son has military or quasi-military property; for as he can pay from them, there is no occasion given for plotting the death of the father in order to pay, and thus the purpose of the law ceases, and therefore from these military or quasi-military goods, he must pay the lender. Similarly if the son is believed to be independent of paternal power; as the laws speak of him who was not believed to be independent; for it is not fair to harm an ignorant lender. Moreover, if he has sworn to repay the loan, he is bound to fulfill the oath, at least after the death of the father; for it was valid, in that it can be fulfilled without sin, as we said [previous citation]; and an oath must be fulfilled whenever it can be done without loss of eternal salvation. Furthermore, he will have an action to recover what he has given; moreover, the oath can be relaxed, for as it seems to have been made in fraud of the law, the prelate has just cause to relax it, lest that famous Macedonian law be rendered useless, as the above-cited authors teach.

9. Moreover, the son is bound to repay, without the favoring privilege of his father, the accedonian loan, when he received something in return that he would have accepted from his father; whether he received it at the command or with the consent of the father, or with his knowledge and non-opposition. Or if the money has been converted for the benefit of the parent, because then his silent consent is considered to be present. Similarly, in l.3.tit.1. part.5., it is stated that nobles, whom he calls Cavaliers, are bound to repay a loan if they accept it. The reason given there is that one who lends to a noble should not suspect that it will be spent on useless things, but on things pertaining to his status. Thus, the silent consent of the father is considered to be present when the son is entrusted with some business and, for its sake, accepts a loan. Therefore, he is obligated to repay unless expressly prohibited by the father from receiving a loan, as stated in l.fed Julianus, §.interdum, ff.ad *Senatusconsult. Macedonianum*. And if the father used to be accustomed to repay money accepted by the sons, because then there is a sufficient presumption that the father consents to the loan, as argued in l.Titianus, ff. quod cum eo, etc. Then, if the sons are soldiers and receive a loan during wartime, they themselves or their parents are obligated to repay, with no exception applied from Macedonian law. This is established so that soldiers easily find lenders, l. ultim. C. ad *Macedonianum*, and by the law of the Kingdom l.4. title 1.part.5. And if the sons, after the death of the parents, expressly or tacitly approve the loan (as they are deemed to approve if they pay part of it), and finally, whenever the loan has been continually acknowledged among the sons, either in kind or in effect, because they have become richer from it, there is no doubt that they are

bound. Because at that point, they are not bound by the force of the contract but by the thing received. Laym. lib. 3.fect.5.tr.4.c.15.n.3. §.caterùm.

10 But there is a difficulty, whether in cases where a son of a household can make use of the Macedonian exception, he remains not only freed from obligation to pay in an external court, in which an action cannot be given against him, but also in the court of conscience? Bonac. denies [this], disp.3.qu.2.point.t.num.6. Covarr. ad regul.sin, p.5.0.9.num.4. Rebellus lib.8. guest.1.sect.2. num.16. Dicaftillo lib.2. tr. 10. dispute.2. num.47. because the laws do not free from natural obligation, but from civil obligation; and because although they do not grant an action, they do not resist a contract; and since they are odious, and penal, prejudicing the obligation of a natural contract, they must be restricted as far as possible, so that they may be understood concerning only a forensic obligation, but not concerning a natural one, and in the court of conscience. But they affirm, with sufficient probability, Leffius lib.2 c.20.num.8. Gomez tom. 2.cap.6.num.1. Sanchez lib.7. Decalog. cap.31. num.22. Layman lib.3. sect.5.tr.4. cap.15.num.4. Palaus disp.4. pun.3.nu.6. because in hatred of moneylenders, and in order that every occasion of scheming may be cut off, the laws have wished to take away both civil and natural obligation, otherwise the law would seem to foster iniquity, granting an exception, lest a loan, which is owed notwithstanding the exception, be paid, nor would it sufficiently provide for the danger of parents, [and] the inequity of moneylenders. And this is undoubted by the law of the Kingdom of Castile, 1.22.tit.11.lib.5. new collect. Where every contract of sons of households is rendered void and null, even if it has been sworn to, [and] initiated by money or a thing having been lent without the consent of the father or guardian, as Matienzo proves there, gloss 8. through the whole.

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Salmanticenses – On usury

Posted on [February 24, 2024](#)

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Council of Nicaea, Usury and Mutuum

Posted on [March 4, 2024](#)

https://www.earlychurchtexts.com/main/nicaea/canons_of_nicaea_01.shtml

Usury is condemned in canon 17

ιζ'. Ἐπειδὴ πολλοὶ ἐν τῷ κανόνι ἐξεταζόμενοι τὴν πλεονεξίαν καὶ τὴν αἰσχροκερδεῖαν διώκοντες, ἐπελάθοντο τοῦ θείου γράμματος λέγοντος, «τὸ ἀργύριον αὐτοῦ οὐκ ἔδωκεν ἐπὶ τόκῳ,» καὶ δανείζοντες ἑκατοστὰς ἀπαιτοῦσιν, ἐδικαίωσεν ἡ ἀγία καὶ μεγάλη σύνοδος, ὡς, εἴ τις εὐρεθῇ μετὰ τὸν ὅρον τοῦτον τόκους λαμβάνειν, ἐκ μεταχειρίσεως ἢ ἄλλως μετερχόμενος τὸ πρᾶγμα, ἢ ἡμιολίας ἀπαιτῶν, ἢ ὅλως ἕτερόν τι ἐπινοῶν αἰσχροῦ κέρδους ἕνεκα, καθαιρεθῇσεται τοῦ κλήρου, καὶ ἀλλότριος τοῦ κανόνος ἔσται.

W. BRIGHT, CANONS OF THE FIRST FOUR GENERAL COUNCILS, 2ND EDN

XVII. Quoniam plerique qui in canone recensentur avaritiam et turpem quaestum sectantes, obliviscuntur divinae Scripturae dicentis: Pecuniam suam non dedit ad usuram (Psalm 14 (15).5), et **foenerantes centesimas** exigunt, aequum censuit sancta et magna synodus, ut si quis inventus fuerit post hanc definitionem usuras sumere **ex mutuo**, vel aliter eam rem consecrari aut sescupla exigere, vel omnino aliquid aliud excogitare turpis lucri gratia, e clero deponatur, et alienus a canone existat.

DIONYSIUS EXIGUUS (MIGNE, PATROLOGIA LATINA VOL. 67, COL. 0040D)

Quoniam multi clerici avaritiae causa turpia lucra sectantes, obliti sunt divini praecepti quo dictum est: Qui pecuniam suam non dedit ad usuram, fenerantes **contesimas** exigunt, statuit hoc sanctum concilium: si quis inventus fuerit post hanc definitionem usuram accipere, vel ex quolibet tali negotio turpia lucra sectari, vel etiam species frumentorum ad sexcuplum dare; omnis qui tale aliquid commentus fuerit ad quaestum, dejicietur ex clero, et alienus ab ecclesiastico habeatur gradu.

ISIDORUS, MIGNE, PATROLOGIA LATINA VOL. 84.

Quoniam multi sub regula constituti avaritiam et turpia lucra sectantur, obliti que divinae scripturae, dicentis qui pecuniam suam non dedit ad usuram, **cum mutuum** dederint, **centesimas** exigunt: iuste constituit sancta et magna synodus, ut, si quis inventus fuerit post hanc definitionem usuras accipiens aut per adinventionem aliquam vel quolibet modo negotium transigens aut himolia, id est sescupla, exigens vel aliquid tale prorsus excogitans turpis lucri gratia: deiciatur a clero et alienus exsistat a regula.

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Quoniam plures in canone constituti cupiditatem et lucra turpia sectantur oblitique sanctae scripturae dicentis: Qui pecuniam suam non dedit ad usuram, cum fenerantur aliis **centesimas** exigunt, iuste statuit sanctum et magnum concilium, ut si quis inventus fuerit post hanc definitionem usuram accipiens aut aliud aliquid excogitans turpis lucri gratia, abiciatur a clero et alienus a canone sit.

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Some Useful Sources

Posted on [April 15, 2024](#)

St. Bernadine Sermons

https://www.google.com.hk/books/edition/Opera_Omnia/u65QAAAAcAAJ?hl=en&gbpv=1&dq=de+Evangelio+aeterno&printsec=frontcover

Herbert Johnson, Some Medieval Doctrines On Extrinsic Titles (86-100)

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Cajetan – De Monte Pietatis – Ch 9

Posted on [June 22, 2024](#)

https://www.google.com/books/edition/Opuscula_omnia_reverend_D_D_Thomae_de_Vi/T4tZH0hq8UC?hl=en&gbpv=1&pg=PA112-IA1&bsq=montes

Primo ex eo, quod usura duobus modis committitur, scilicet augendo ex mutuo capitale, et exigendo recompensationem damni, quod non propter mutui veneficium incurritur. Neque enim minus usuram sapit velle ab accipiente mutuum recompensationem damni, quod ab hostibus vel latronibus passus est, quam velle ad augendas opes aliquid ultra sortem. In proposito autem, cum iam pateat, Montem pietatis, sive universitatis pauperum, et breviter volentem si pecuniam Montis integre, et secure salvare quicumque sit ille, exigere a loanne paupere mutuum petente expensas, quae non in illius favorem sunt, consequens est, quod exigit recompensationem damni, quod non ex mutui veneficio incurritur sed propter pecuniae rehabendae securitatem. Nec obstat aliquantulum, quod damnum ex hoc mutuo emergit, saltem occasionaliter, nihil siquidem refert, unde damnum hoc proveniat, aut a quo inferatur; dummodo ex eo, quod sit in favorem loan pauperis ut sic, non causetur: ista enim negatio sufficit ad hoc quod iniuste exigatur ab eo, et consequenter, quod usurarie, ex quo ut dictum est, non refert ad usuram damnum indebitum a petente mutuum exigere, aut lucrum quarere.

Firstly, from the fact that usury is committed in two ways, namely by increasing the capital from a loan, and by demanding compensation for damage that is not incurred because of the benefit of the loan. For it is no less usurious to want compensation from the borrower for damage suffered from enemies or thieves, than to want something beyond the principal to increase wealth. In the matter at hand, however, since it is now clear that the Mount of Piety, or the community of the poor, and briefly, anyone wanting the money of the Mount to be preserved entirely and securely, whoever he may be, demands from John the poor man requesting a loan expenses which are not made in his favor, it follows that he demands compensation for damage which is not incurred from the benefit of the loan but for the security of recovering the money. Nor does it stand in the way in any way that damage arises from this loan, at least occasionally, for indeed it matters not whence this damage comes, or by whom it is inflicted; as long as it is not caused by that which is done in favor of poor John as such: for this negation suffices for it to be unjustly demanded from him, and consequently, usuriously, since as it has been said, it does not matter for usury to demand undue damage from the one requesting a loan, or to seek profit.

Secundo ex eo, quod non minus vfurarium est, mercedem alteri debitam, non ex feruitio impenfo ad mutui beneficium, vt fic, ab accipiente mutuum exigere, quam

Secondly, from the fact that it is no less usurious to demand from the borrower a fee owed to another, not for service rendered for the benefit of the loan as

quodcunque aliud lucrum vltra fortem petere,neque enim ab vfura remotius eft grauare iniufte accipientem mutuum ad foluendum aliquid vltra fortem alteri,quacumq; ex caufa quam fibiipfi mutuanti. Conftat autem, quod hic grauatur iniufte Ioannes pauper,dum accipit mutuum ad foluendum miniftris pro operibus, pro quibus non tenetur,quatiquam nihil ad Montis mutuantis argumentum exigatur.Non igitur fubterfugi poteft,quin vfuraria fit exactio ifta,fecundum iuftitiæ commutatiuæ formam loquendo.

such, than to seek any other profit beyond the principal. For it is no further removed from usury to unjustly burden the borrower to pay something beyond the principal to another, for whatever reason, than to the lender himself. It is evident, however, that here poor John is unjustly burdened, while he receives a loan, to pay the ministers for works for which he is not responsible, even though nothing is demanded for the increase of the lending Mount. Therefore, it cannot be evaded that this exaction is usurious, speaking according to the form of commutative justice.

Adeuidentiam vero folutionis obiectionum in oppofitum diligenter attendendum eft, quod hic funt duo, f.reddere mercedem miniftris, feu (quod idem eft) ipfos miniftros accipere mercedem pro locatis operibus, & hoc eft iuftiffimum & omni quitate plenum, quia eius caufa eft locatio operum fuorum. Alterum eft exigere huiufmodi mercedem à Ioanne paupere, & hociniuftum & vfurarium eft, quia eius nulla caufa alia eft,nifi mutuum, quoniam operæ illæ collatæ non funt Ioanni pauperi, vt propter illas ab eo exigere merces poffit.

For the clarity of the solution to the objections to the contrary, it must be carefully noted that there are two things here: First, to pay wages to the ministers, or (which is the same thing) for the ministers themselves to receive wages for their hired work, and this is most just and full of all equity, because its cause is the hiring of their work. The other is to demand such wages from poor John, and this is unjust and usurious, because there is no other cause for it except the loan, since those works were not performed for poor John, so that wages could be demanded from him because of them.

Vnde prima ratio peccat,affumendo quod hic nihil vltra fortem quæritur propter mutuum, fed tantum propter locatas operas, quoniam fecundum veritatem, ex mutuo exactio ifta caufatur, vt ex dictis patet. Vel (& in idem redit) verbaliter refpondendo dicatur, quod exigere propter locatas operas poteft contingere dupliciter. Vno modo propter locatas operas in fauorem accipientis mutuum,&tunc bene D fequitur; ergo non propter mutuum; quia locatio operarum in huius accipientis mutuum fauorem facta, caufa proxima eft,quod ab eo iufte merces hæc exigatur. Alio modo propter locatas

Hence the first argument errs by assuming that nothing beyond the principal is sought here because of the loan, but only because of the hired works, since according to the truth, this exaction is caused by the loan, as is clear from what has been said. Or (and it amounts to the same thing) responding verbally, it may be said that to demand because of hired works can happen in two ways. One way is because of works hired in favor of the one receiving the loan, and then it follows well; therefore not because of the loan; because the

operas non in fauorem huius accipientis mutuum, fed alterius quicunque fit illa, & tunc male infertur: ergo non propter mutuum: quoniam caufa proxima huius exactionis eft vel mutuum, vel locatio operarum: fed locatio operarum caufa fecundum iuftitiam effe non poteft, eo quod operæ non fint in fauorem huius accipientis mutuum locata, igitur mutuum huius exactionis caufa proxima eft, ac per hoc vfura committitur. Nec obftat id, quod confirmando fubdebatur, f. quod fi miniftri donare hoc volunt, Mons nõ turbabitur. Ex hoc enim nihil aliud haberi poteft, nifi quod Mons lucrum ex hoc non quærit, fed non habetur, quin Ioannes pauper grauetur ex accepto mutuo ad mercedem reddendam miniftris, ad quam non tenetur, ficut fi pauper ab aliquo mutuum fumat, cum onere, quod ruftico cultori vineæ mutuantis mercedem reddat, vfura non deficit ex eo, quod rufticus poteft illi pauperi abfque mutuantis turbatione dare donare mercedem propriam.

hiring of works done in favor of this borrower is the proximate cause for which this wage is justly demanded from him. Another way is because of hired works not in favor of this borrower, but of another, whoever that may be, and then it is wrongly inferred: therefore not because of the loan: since the proximate cause of this exaction is either the loan or the hiring of works: but the hiring of works cannot be the cause according to justice, because the works are not hired in favor of this borrower, therefore the loan is the proximate cause of this exaction, and through this usury is committed. Nor does it stand in the way, what was added in confirmation, namely that if the ministers want to donate this, the Mount will not be disturbed. For from this nothing else can be had, except that the Mount does not seek profit from this, but it is not had that poor John is not burdened from the accepted loan to pay wages to the ministers, to which he is not bound, just as if a poor man takes a loan from someone, with the burden that he pay wages to the rustic cultivator of the lender's vineyard, usury is not lacking from the fact that the rustic can donate his own wages to that poor man without disturbing the lender.

Secunda autem ratio concludit, mercedem miniftrorum non effe vfurariam, & hoc proculdubio verum eft: quoniam iufta & fancta eft: fed non pbat quin mercedis exactio à Ioan. paupere, qui nõ tenetur, fit vfura: debet enim merces illa exigi ab eo, qui tenetur ad illam, & non ab hoc paupere. Et ideo fi reddatur merces talis ab eo, qui tenetur, iuftitia eft, vel charitas fi pietatis intuitu ab aliquo, qui non tenetur. Si autem exigatur ab eo, qui non tenetur, clare cõftat, quod quamuis merces fibi debetur, iniufta tamen exactio eft, quia hic non tenetur. Et fi adiunxeris, quod exactio non nifi propter mutuum mandatur,

The second argument concludes that the wage of the ministers is not usurious, and this is undoubtedly true: since it is just and holy. But it does not prove that the exaction of the wage from poor John, who is not obliged, is not usury: for that wage ought to be exacted from the one who is obliged to pay it, and not from this poor man. And therefore if such a wage is paid by the one who is obliged, it is justice, or charity if it is paid out of piety by someone who is not obliged. But if it is exacted from one who is not obliged, it is clearly evident that

vfuraria manifeste apparebit: quod in cafu
ifto contingere iam patet. Eft igitur infra
iufitiae commutativae terminos loquendo,
multiplex iniuftitia & vfura in capitulis
Montis pietatis.

although the wage is owed to them [the
ministers], nevertheless the exaction is
unjust, because this person is not
obliged. And if you add that the exaction
is ordered only because of the loan, it
will appear manifestly usurious: which
in this case is now clear. Therefore,
speaking within the terms of
commutative justice, there is manifold
injustice and usury in the chapters of the
Mount of Piety.

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MONTHLY ARCHIVES: JULY 2024

Preliminary Study List

Posted on [July 23, 2024](#)

Current Reading (7/23)

- Liguori Moral Theology – Question on Usury
(<https://novusordowatch.org/st-alphonsus-liguori-moral-theology-usury/>)
- Rethinking Cooperation with Evil – Ryan Connors

Roman Law (focus on mutuum, commodatum, locatio, pignus, fiducia, and usufruct)

- Digest
- Law of Obligations – Zimmerman
- Roman Private Law – Roby
(<https://archive.org/details/romanprivatelawi02robyuoft>)
- Classical Roman Law – Schulz
(<https://archive.org/details/classicalromanla0000schu>)
- Intro to Roman Law – Nicholas

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PhD Bibliography

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Dominic Prummer – Manuale Theologiae II – **Claude Translation**

Posted on [July 16, 2024](#)
<https://archive.org/details/PrummerManualeTheologiaeMoralisII/page/n123/mode/2up>

Praenotamen. Doctrina de mutuo et usura hodie nullam fere difficultatem practicam pro confessario habet. Proinde breviter de hac re tractamus insinuantes summaria capita huius doctrinae. Innumera fere opera scripta sunt de mutuo et usura. Inter modernos moralistas Tanquerey 90 sufficientissime de hac re egit. Mutuum 91 est contractus, quo dominium rei primo usu consumpti- 284 bilis et fungibilis

Preface. The doctrine of loan and usury today presents almost no practical difficulty for the confessor. Therefore, we treat this matter briefly, introducing the summary points of this doctrine. Almost innumerable works have been written about loan and usury. Among modern moralists, Tanquerey has

alteri traditur cum obligatione, ut res eiusdem valoris suo tempore reddatur. Dicitur: „rei primo usu consumptibilis et fungibilis”, ad distinguendum mutuum a commodato et locatione, in quibus res non-consumptibilis datur cum obligatione reddendi eandem rem in individuo. Mutuum item distinguitur a deposito aliisque contractibus in paragrapho praecedenti enumeratis ob eandem rationem, et insuper quia res mutuata sub hac sua individuali forma statim transit in dominium recipientis, quod non accidit in contractibus commodati, depositi etc.

dealt with this matter most sufficiently. A loan is a contract by which the ownership of a thing consumable by first use and fungible is transferred to another with the obligation that a thing of the same value be returned in due time. It is said: “of a thing consumable by first use and fungible,” to distinguish a loan from a commodatum and a lease, in which a non-consumable thing is given with the obligation of returning the same thing individually. A loan is also distinguished from a deposit and other contracts enumerated in the preceding paragraph for the same reason, and moreover because the thing loaned in this individual form immediately passes into the ownership of the recipient, which does not occur in contracts of commodatum, deposit, etc.

Obiectum igitur mutui est res primo usu consumptibilis et fungibilis, e. gr. vinum, oleum et praesertim pecunia. Omnis autem talis res est infructuosa in se. Fructifera potest esse res aliqua: i. naturaliter, ut arbor producit fructus; 2. artificialiter seu industrialiter, ut mercator ope pecuniae emit merces, ex quarum venditione facit lucrum; 3. civiliter, ut domus locata producit pretium locationis. Cf. supra n. 208. 286 Usura definitur a S. Thoma: „Acceptio pretii pro usu rei mutuatae”^{***}, vel obiective considerata: «Pretium usus rei mutuatae». Latius hanc definitionem explicat Concilium Lateranense V, sess. 10: „Ea est propria usurarum interpretatio, quando videlicet ex usu rei, quae non germinat, nullo labore, nullo sumptu, nullo periculo lucrum foetusque conquiri studetur.” — Essentia igitur usurae consistit in acceptione lucri ex puro mutuo. Si enim lucrum accipitur ratione alterius tituli extrinseci, e. gr. damni emergentis, periculi etc., non est usura. Pariter non est usura, si lucrum ex mutuo quidem accipitur, sed titulo gratuito et non oneroso 03 .

The object of a loan, therefore, is a thing consumable by first use and fungible, e.g. wine, oil, and especially money. However, every such thing is unfruitful in itself. A thing can be fruitful: 1. naturally, as a tree produces fruit; 2. artificially or industrially, as a merchant buys goods with money, from the sale of which he makes a profit; 3. civilly, as a rented house produces rental income. Cf. above n. 208. Usury is defined by St. Thomas as: “The taking of a price for the use of a loaned thing,” or objectively considered: “The price for the use of a loaned thing.” The Fifth Lateran Council, session 10, explains this definition more broadly: “This is the proper interpretation of usury, namely when profit and increase are sought from the use of a thing that does not produce, without any labor, any expense, or any risk.” — The essence of usury, therefore, consists in the acceptance of profit from a pure loan. For if profit is accepted by reason of another extrinsic title, e.g. emerging

Quamvis secundum vim nominis non distinguantur usura et fenus, tamen, claritatis causa melius est, ut usura semper sumatur in malam partem; fenus autem (vel interesse, vel auctarium) in bonum sensum. Usura igitur est aut lucrum ex puro mutuo, aut lucrum excessivum 94 perceptum ex pecunia commodata, e. gr. 30%- Fenus autem est lucrum licite perceptum ex mutuo. — Fenus distinguitur aut legale, quod a lege patriae determinatur; aut vulgare, quod ex communi usu in aliquo negotio constituitur; aut conventionale, quod ex conventionem mutuantis et mutuatarii definitur. Fenus legale et vulgare censetur esse iustum. Fenus autem conventionale non est iustum, nisi visis circumstantiis locorum, temporum et personarum respondeat lucro cessanti et periculo sortis, quod mutuans pati debeat. Alia mensura magis exacta non potest dari de quantitate feneratoris. S. Poenitentiaria die 18 Apr. 1889 95 ad quaesitum, num liceat 8 vel 10% feneratoris percipere, respondit: „Cum fructus pecuniae taxare per modum regulae periculosum sit, Ven. in Christo Pater Episcopus orator in singulis casibus rem decernat iuxta praxim communem servatam ab hominibus timoratae conscientiae respectivis in locis et temporibus.” — Puto nostris temporibus sub condicionibus ordinariis fenus excedens 20% esse usurarium ac iniustum 90, quia multum excedit quantitatem, quae in publicis institutis nummulariis (vulgo Bank) statuitur. Exinde tamen nolo condemnare actiones societatum industrialium, quae 30 % aut etiam 50% dant annuatim, quia tale auctarium non est fenus proprie dictum, sed fructus commercii facti. — Usura in hoc malo sensu accepta graviter punitur quoque a Codicibus civilibus 97 atque inducit obligationem restitutionis.

loss, risk, etc., it is not usury. Likewise, it is not usury if profit is indeed received from a loan, but by a gratuitous and not onerous title.

Although according to the force of the name, usury and interest are not distinguished, nevertheless, for the sake of clarity it is better that usury always be taken in a bad sense; while interest (or fenus, or auctarium) in a good sense. Usury therefore is either profit from a pure loan, or excessive profit received from loaned money, e.g. 30%. Interest, however, is profit licitly received from a loan. — Interest is distinguished as either legal, which is determined by the law of the country; or common, which is established by common use in some business; or conventional, which is defined by agreement between the lender and borrower. Legal and common interest are considered to be just. Conventional interest, however, is not just unless, considering the circumstances of places, times, and persons, it corresponds to the profit lost and the risk to the principal that the lender must bear. No other more exact measure can be given for the quantity of interest. The Sacred Penitentiary on April 18, 1889, to the question whether it is licit to receive 8 or 10% interest, responded: “Since it is dangerous to fix the fruits of money by way of a rule, let the Venerable Father in Christ, the Bishop inquirer, decide in individual cases according to the common practice observed by people of timorous conscience in the respective places and times.” — I think in our times under ordinary conditions, interest exceeding 20% is usurious and unjust, because it greatly exceeds the quantity which is set in public monetary institutions (commonly called Banks). From this, however, I do not wish to condemn the actions of industrial societies, which give 30%

	or even 50% annually, because such an increase is not interest properly so called, but the fruit of commerce done. — Usury accepted in this bad sense is also severely punished by civil codes and induces an obligation of restitution.
us[^]OZ: nanZr Prie ^ ^ POSMVUm ..! ' a senlenti * commum ssima, quam Benedictus XIV in libro De svn v ° c " ? doctrinam Ecclesiae catholicae, et eui solus fere D'Annibale»» a " h,S. ^ rb,S: " Null ° "" " «<> seu naturali seu divino iure constat Ecc esiae caTh o tT T ^ ^ « SC ' Q ui " P*i« « ratione "S n-cciesiae catholicae contrarium comcitur." ° turapiw t!' * Est ™ ntra tu f positivum divinum. Ex multis textibus S. Scrip?r S ' D ; dtUr " Ps , almoI 4: .Domine, q uis habitabit ZjTZ Z ° V Enumeratur mter alios: „Qui pecuniam suam non dedu ad usuram/ Ergo usura excludit a caelo. In Evangelio 393 dicitur „ Mutuum date , nihil mde sperantes." De sensu huius loci vidLis Billuart 393 nil L™ Est contra tus ecclesiasticum. Sunt quinque Concilia oecumemca, quae prohibuerunt usuram, scii. Concilia Lateranensia III, IV, V- Concilium Lugd un e ns e II, Concilium Viennense 39 ». Pariter Sixtus V reprobavit «usuet J Oragmem ' f ? e ° ^ nibusque odiosam, sacris canonibus damnem et chnstianae caritati contrariam." Alexander VII proscripsit propositionem (42). «Licitum est mutuanti aliquid ultra sortem exigere, si se obliget ad ° ^ dam SOr ' em " s ^ ue ad cert «m tempus." 394 Cf. etiam proposftiones BenedictusTlVFt 2 i " Innocentio XIm * Praesertim autem tfenedictus XIV Encyclica sua „Vix pervenit" d. 1 Nov. i 74 < certam de T',543. C °	The prohibition of usury is based on positive divine law and Church law: It is against positive divine law. From many texts of Holy Scripture, for example, it is said in Psalm 14: "Lord, who shall dwell in thy tabernacle?" Among others is listed: "He that hath not put out his money to usury." Therefore usury excludes one from heaven. In the Gospel it is said "Lend, hoping for nothing thereby." On the meaning of this passage, see Billuart. It is against ecclesiastical law. There are five ecumenical Councils which prohibited usury, namely the Third, Fourth, and Fifth Lateran Councils; the Second Council of Lyon, and the Council of Vienne. Likewise, Sixtus V condemned "usury and that devouring monster, hateful to God and men, condemned by the sacred canons and contrary to Christian charity." Alexander VII proscribed the proposition (42): "It is lawful for a lender to require something beyond the principal, if he obliges himself not to demand the principal for a certain time." Cf. also propositions 41 and 42 condemned by Innocent XI. But especially Benedict XIV in his Encyclical "Vix pervenit" of Nov. 1, 1745 established a certain doctrine about usury.
*[° h ' 3 ' Est C0,ltra iUS naturale ' Q uare S. Thomas dicit: «Accipere -P- P ecun, a mutuata est secundum se iniustum" 197 * probat autem vendlr ^ ™ m ° d ° : iustitiam ac Proinde contra ius naturale est Ervo oee ' (q ° d t nOn eS - ' aUt V " dere bis idem – aurarius facit hoc tenetur Mlio ^ ^ rp 1 " ? ™ »' " t na,urale ' « Proinde ad restitutionem P PrOb ' Mm ' In rebus dnngibii ibus et primo usu con- sunt P mor »l . S	This passage continues the argument against usury, focusing on its violation of natural law: It is against natural law. Thus St. Thomas says: "To take usury for money lent is unjust in itself" and he proves it in this way: It is against justice and therefore against natural law to sell what does not exist, or to sell the

‘ T P ro PrTM obiectum usurae, ipsae res earumque usus sunt morahter idem. Ideoque sicut plane ridiculum et iniustum foret si ^ucon° S umnt tqUam PrCti ° iust0 ’ Vellet insu P er vendere usum lta iniUSte ageret ’ si < ? uis reclamaret praeter vinum mutuo datum aliquid aliud pro usu istius vini. Ceteroquin pecunia de qua nihlToeC eSt . US . Ura ’ man,feste n on distinguitur moraliter ab eius usu. E^go mh peti potest pro usu pecuniae mutuatae, et si nihilominus aliquid acceptum est, debet restitui. Belle dicit S. Leo Magnus: «fenus pecunfae funus est animae 3C8 .

same thing twice. The usurer does this. Therefore usury is against natural law, and consequently obliges to restitution. Proof of the minor: In fungible things consumable by first use, which are the proper object of usury, the things themselves and their use are morally the same. Therefore, just as it would be plainly ridiculous and unjust if someone, after selling wine at a just price, wanted to sell its use additionally, so he would act unjustly if someone demanded, besides the wine given as a loan, something else for the use of that wine. Moreover, money, about which usury is especially concerned, is clearly not morally distinguished from its use. Therefore, nothing can be demanded for the use of loaned money, and if nevertheless something has been accepted, it must be restored. St. Leo the Great beautifully says: “The interest of money is the funeral of the soul.”

tamen adsunt causae extrinsecae, propter quas exigi potest in contractu mutui aliquod auctarium seu fenus. Iam S. Thomas 100 tales causas enuntiat, et Benedictus XIV 110 hoc expresse docet. Solent quattuor causae seu tituli enumerari: 1. periculum sortis, 2. poena conventionalis, 3. lucrum cessans vel damnum emergens, 4. lex civilis seu praemium legale. 1. Periculum sortis 111 est speciale (non generale) periculum, quo prudenter timetur, ne mutuans rem suam non recuperet. Tale periculum speciale saepe adest, praesertim si quis committit pecuniam suam quibusdam institutis nummulariis vel debitoribus parum securis. Patet propter tale periculum posse accipi aliquod fenus 112 . Res enim, quae extra periculum possidetur, plus aestimatur quam eadem res in periculo posita. 2. Poena conventionalis constituitur pro casu, quo mutuarius ex culpabili mora redditionem sortis ultra stipulatum tempus differat. Ut ista causa sit sufficiens et iusta, requiritur, ut poena imposita sit moderata et dilatio solutionis revera culpabilis. 3. Damnum emergens et lucrum cessans. Lucrum cessans est defectus

External causes justifying interest. Although usury is never licit and a loan properly so-called should always be gratuitous, nevertheless there are external causes for which some increase or interest can be demanded in a loan contract. Already St. Thomas enunciates such causes, and Benedict XIV expressly teaches this. Four causes or titles are usually enumerated: 1. risk to the principal, 2. conventional penalty, 3. profit lost or loss incurred, 4. civil law or legal premium. Risk to the principal is a special (not general) risk, by which it is prudently feared that the lender may not recover his property. Such special risk is often present, especially if one entrusts one’s money to certain monetary institutions or to less secure debtors. It is clear that some interest can be taken on account of such risk. For a thing possessed without risk is valued more than the same thing placed at

alicuius lucri proxime sperati, quod mutuans certo habuisset, si pecuniam mutuatam aliis usibus obviis deputasset. Damnum vero emergens est positivum detrimentum, quod mutuans subire debet propter contractum mutui. Etiam istas causas sufficere ad exigendum proportionatum fenus in mutuo, per se patet et ab omnibus hodie admittitur 118 .

risk. Conventional penalty is established for the case where the borrower, through culpable delay, defers the return of the principal beyond the stipulated time. For this cause to be sufficient and just, it is required that the imposed penalty be moderate and the delay in payment truly culpable. Loss incurred and profit lost. Profit lost is the lack of some closely expected profit, which the lender would certainly have had if he had allocated the loaned money to other obvious uses. Loss incurred, however, is positive detriment which the lender must undergo because of the loan contract. That these causes also suffice for demanding proportionate interest in a loan is self-evident and is admitted by all today.

4. Praemium legale seu lex civilis. Inde a saeculo XVI acriter disputatum est, num lex civilis valeat, deficientibus aliis titulis, licitam reddere usuram. Hodie haec disputatio videtur esse finita. Etenim ad dubium: „An poenitentes, qui moderatum lucrum solo legis titulo ex mutuo dubia vel mala fide perceperunt, absolvi sacramentaliter possint, nullo imposito restitutionis onere, dummodo de patrato ob dubiam vel malam fidem peccato sincere doleant, et filiali oboedientia parati sint stare mandatis S. Sedis’*, respondit S. Officium d. 17 Ian. 1838: „Affirmative, dummodo parati sint stare mandatis S. Sedis.** —

In eundem sensum pluries responsum est a S. Poenitentiaria, e. gr. 14 Aug. 1831; 11 Nov. 1831; 11 Febr. 1832; 23 Nov. 1832 114 . S. Congregatio de Propaganda Fide colligens omnes fere resolutiones SS. Congregationum usque ad a. 1873 emanatas in haec verba concludit: „Deficientibus licet aliis quibuslibet titulis . . . unum quoque legis civilis titulum ceu sufficientem in praxi haberi posse, tum a fidelibus, tum ab eorum confessariis, quibus proinde suos poenitentes hac super re inquietare non licet, donec quaestio haec sub iudice pendeat, nec S. Sedes ipsam explicite definierit. “ 116 Idem statuit Codex iur. can. c. 1543: „In praestatione rei fungibiliis non est per

Legal premium or civil law. Since the 16th century, it has been fiercely debated whether civil law can, in the absence of other titles, render usury licit. Today this dispute seems to be finished. Indeed, to the doubt: “Whether penitents who have received moderate profit by the title of law alone from a loan in doubtful or bad faith can be sacramentally absolved, with no obligation of restitution imposed, provided they sincerely repent of the sin committed due to doubtful or bad faith, and with filial obedience are prepared to stand by the mandates of the Holy See”, the Holy Office responded on Jan. 17, 1838: “Affirmative, provided they are prepared to stand by the mandates of the Holy See.” — In the same sense, the Sacred Penitentiary responded several times, e.g., Aug. 14, 1831; Nov. 11, 1831; Feb. 11, 1832; Nov. 23, 1832. The Sacred Congregation for the Propagation of the Faith, collecting almost all the resolutions of the Sacred Congregations issued up to 1873, concludes in these words: “Even in the absence of any other

se illicitum de lucro legali pacisci, nisi constet ipsum esse immoderatum, aut etiam de lucro maiore, si iustus ac proportionatus titulus suffragetur. “ Ratio est, quia supremo legislatori vi dominii alti et ratione boni publici competit ius transferendi proprietatem istius auctarii a mutuataro in mutuantem, idque vel eo magis, quod subditi sponte consentiant. Et revera hodiernis temporibus mercatura esset impossibilis et bonum publicum graviter laederetur, si moderatum auctarium seu fenus non permetteretur.

titles... the title of civil law alone can be considered sufficient in practice, both by the faithful and by their confessors, who therefore are not permitted to disturb their penitents on this matter, as long as this question remains under judgment, and the Holy See has not explicitly defined it.” The Code of Canon Law c. 1543 states the same: “In the provision of a fungible thing, it is not in itself illicit to contract for legal profit, unless it is clear that it is immoderate, or even for greater profit, if a just and proportionate title supports it.” The reason is that the supreme legislator, by virtue of high dominion and for the sake of public good, has the right to transfer the property of that increase from the borrower to the lender, and this all the more so because the subjects consent voluntarily. And indeed, in modern times, commerce would be impossible and the public good would be seriously harmed if moderate increase or interest were not permitted.

Alii auctores 116 aliter processerunt, putantes moderatum fenus esse licitum etiam sine titulis extrinsecis legitimantibus. Etenim hodiernis temporibus auctarium seu fenus unice fere exigitur et accipitur pro pecunia mutuata. Porro pecunia hodie non est prorsus sterilis, sed revera quasi-frugifera. Sane pecunia non parit pecuniam, sicut vacca parit vitulum; sed sicut domus locata producit lucrum, ita fere etiam pecunia mutuo data. — Praeterea pecunia hodie est principale instrumentum negotiationis atque statim et absque ulla difficultate converti potest in res fructiferas. Unde contractus, quo pecunia alteri traditur sub condicione legitimi feneratoris, iam non est proprium mutuum aut usura, in quibus res sterilis traditur, sed contractus sui generis 117 . Proinde gravissimae prohibitiones latae contra usuram iam non possunt applicari pecuniae mutuatae. Num haec sententia sit vera, non clare apparet. Etenim quamvis pecunia hodie multo facilius possit converti in res fructiferas quam antiquis

Other authors have proceeded differently, thinking that moderate interest is licit even without extrinsic legitimating titles. Indeed, in modern times, increase or interest is almost solely demanded and accepted for loaned money. Furthermore, money today is not entirely sterile, but is truly quasi-fruitful. Certainly, money does not beget money, as a cow begets a calf; but just as a rented house produces profit, so also does loaned money. — Moreover, money today is the principal instrument of business and can be immediately and without any difficulty converted into fruitful things. Hence a contract by which money is handed over to another under the condition of legitimate interest is no longer a proper loan or usury, in which a sterile thing is handed over, but a

temporibus, tamen inde nondum sequitur eam mutasse naturam suam atque ex se ipsa esse effectam fructiferam.

contract of its own kind. Therefore, the very grave prohibitions issued against usury can no longer be applied to loaned money. Whether this opinion is true is not clearly apparent. For although money today can be much more easily converted into fruitful things than in ancient times, it does not yet follow from this that it has changed its nature and has become fruitful in itself.

Pro praxi. Omnes (sive clerici sive laici) possunt tuta conscientia moderatum fenus, immo et anatocismum seu usuras usurarum 118 percipere ex pecunia mutuata, ita ut numquam adsit obligatio restitutionis talis feneratoris percepti. Hodie enim semper adsunt tituli extrinseci supra indicati. Quodnam autem sit fenus moderatum, pendet a periculo sortis, lucro cessante et damno emergente. Quare in regionibus, ubi adest taxa legalis vel consuetudo admissa, huic standum est. Immo aliquid amplius accipi potest, si pecunia traditur illis societati-bus, quae vulgo vocantur Aktiengesellschaften, societates par actions. Numquam autem licet abuti indigentia mutuatarum ad extorquendum fenus immoderatum, cum secus laedatur cum iustitia tum caritas 119

For practice. All (whether clerics or laity) can with safe conscience receive moderate interest, even compound interest or interest on interest, from loaned money, so that there is never an obligation to restore such received interest. For today there are always extrinsic titles indicated above. However, what constitutes moderate interest depends on the risk to the principal, profit lost, and loss incurred. Therefore, in regions where there is a legal rate or accepted custom, this should be followed. Indeed, something more can be accepted if money is given to those societies which are commonly called Aktiengesellschaften, societies par actions [joint-stock companies]. However, it is never permitted to abuse the need of the borrower to extort immoderate interest, as otherwise both justice and charity would be violated.

Scholion 1. De montibus pietatis, de arcibus parcimoniae et mensis nummulariis. Mons pietatis est cumulus pecuniarum aliarumve rerum mutuabili ut ad id collectus, ut pauperes, datis pignore et moderato fenore, ex eo accipere mutuo possint, quae sibi sunt necessaria. Hodie vocantur Pfandhäuser, pawnshop, mont de piété. Montes pietatis (primo Urbis veteris [1463] vel Perusiae [1467] erectos) approbaverunt Concilium Lateranense V 120 et Tridentinum 121. Tunc temporis fuerunt in sublevamen pauperum, cum non exigeretur nisi valde moderatum fenus; nunc vero, cum isti montes

Scholion 1. On mountains of piety, savings banks, and money-changing tables. A mons pietatis is a collection of money or other loanable things gathered for this purpose: that the poor, by giving a pledge and moderate interest, may be able to receive as a loan from it what is necessary for them. Today they are called Pfandhäuser, pawnshops, mont de piété. The Fifth Lateran Council and the Council of Trent approved mountains of piety (first erected in

pietatis saepe transierunt ad homines privatos, cumque fenus postulatam non raro sit excessivum, propter varias rationes montes pietatis aliquando potius sunt montes iniquitatis. Valde desiderandum est, ut gubernium sedulo observet atque coerceat huiusmodi instituta. Arcae parcimoniae (Sparkasse, caisse d' épargne, savings-bank) sunt institutae vel a municipiis vel ab hominibus privatis ad recipiendas pecunias (non ita magnae quantitatis) et ad solvendum fenus conveniens pro pecunia recepta. Finis istorum institutorum est fovere parcimoniam, praesertim hominum mediocris fortunae; quod sane est optimum. Licet ponere pecuniam in istis arcis parcimoniae, ut expresse declaravit S. Penitentiaria d. 25 Febr. 1836.

Orvieto [1463] or Perugia [1467]). At that time, they were for the relief of the poor, as only very moderate interest was required; now, however, since these mountains of piety have often passed to private individuals, and since the interest demanded is not rarely excessive, for various reasons the mountains of piety are sometimes rather mountains of iniquity. It is greatly to be desired that the government carefully observe and restrain such institutions. Savings banks (Sparkasse, caisse d' épargne, savings-bank) are instituted either by municipalities or by private individuals to receive money (not of very large quantity) and to pay suitable interest for the money received. The purpose of these institutions is to foster thrift, especially of people of moderate means; which indeed is excellent. It is permitted to place money in these savings banks, as the Sacred Penitentiary expressly declared on Feb. 25, 1836.

Mensae nummulariae (Bank, banque, bank) ubique terrarum existunt et valde inserviunt commerciis diversi generis. Attamen, experientia comprobante, etiam haud parva incommoda et damna producere possunt. Cum non raro accidat, ut sacerdos, praesertim si est parochus, pecunias admini-strare debeat, aut cius consilium petatur in rebus pecuniariis, valde utile erit, si conetur cognoscere diversas species bancarum. Iuxta modernam praxim omnes (etiam sacerdotes) possunt pecuniam collocare in istis bancis atque cum „actiones” tum „obligationes” 128 emere, dummodo evitentur scandalum, cooperatio ad malum, proprie dictae speculationes bursae. Num autem pecunia pertinens ad ecclesias aliasque causas pias possit collocari in arcis parcimoniae aut in bancis, pendet cum a cōndicione istorum institutorum, tum a statutis particularibus ecclesiasticis.

Money-changing tables (Bank, banque, bank) exist everywhere in the world and serve various types of commerce greatly. However, as experience proves, they can also produce not insignificant inconveniences and damages. Since it not rarely happens that a priest, especially if he is a pastor, must administer money, or his advice is sought in financial matters, it will be very useful if he tries to understand the different types of banks. According to modern practice, everyone (even priests) can place money in these banks and buy both “shares” and “bonds”, as long as scandal, cooperation in evil, and stock market speculation properly so-called are avoided. Whether money belonging to churches and other pious causes can be placed in savings

banks or banks depends both on the condition of these institutions and on particular ecclesiastical statutes.

Scholion 2. De contractu census. Census (Rente) est ius percipiendi 290 pensionem annuam a re vel persona. Haec pensio annualis vocabatur canon, redditus. Distinguebatur census reservativus (ortus ex traditione rei immobilis) ; census consignativus seu simpliciter dictus (emptus ex traditione alicuius , .capitalis”), e. gr. trado tibi 10 000 francorum ea condicione, ut usque ad mortem recipiam quotannis 800 francos; census realis , qui est quasi servitus alicui rei imposita et est idem fere ac emphyteusis 123 , e. gr. trado tibi istos agros, ut tu tuique heredes ex fructibus illorum mihi solvatis quotannis 100 francos. — Dantur adhuc aliae divisiones, ut census personalis, pecuniarius, fructuarius, redimibilis, irredimibilis etc. 124 Quidquid est de veteribus legibus, hodie census licitus est, dummodo adsit iusta proportio inter censum et pretium. Etenim census est ad instar feneratoris. Porro hodie fenus aut mutuum licitum est, dummodo sit moderatum.

Scholion 2. On the contract of census. Census (Rente) is the right to receive an annual payment from a thing or person. This annual payment was called canon, revenue. A distinction was made between: Census reservativus (arising from the transfer of immovable property) Census consignativus or simply called (bought from the transfer of some “capital”), e.g., I give you 10,000 francs on the condition that until death I receive 800 francs annually Census realis, which is like a servitude imposed on some thing and is almost the same as emphyteusis, e.g., I give you these fields, so that you and your heirs pay me 100 francs annually from their fruits. There are still other divisions, such as personal census, pecuniary, fruit-bearing, redeemable, irredeemable, etc. Whatever may be said about old laws, today census is licit, provided there is a just proportion between the census and the price. Indeed, census is similar to interest. Furthermore, today interest or loan is licit, provided it is moderate.

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Omnis homo a natura non degenerans veritatem amat, et eam scire super omnia desiderat. Quam si quis simplicitate cordis sui, ipsa seipsam manifestabit; et Deus qui hoc promittit, verax est, et eam praebeat diligenter, *qui se concupiscunt, ut illis se prior ostendat*: Eccles. 1: *fili, concupiscens sapientiam accede ad illam, et domum eius intras, et non erare permittat in periculum animae meae, et in laqueum aliorum; sed illuminare dignetur oculos caligine veritatis usquequaque pertingere. Amen.* Quoniam vero in dubiis quorum veritas agnita salutaris est, et in re utile est veritatem investigare, et temporibus nostris audivimus multas controversias inter doctores, non solum in moralibus, in quibus periculum est diversa sentire et opinari, et praecipue in illa parte iustitiae quae contra vitium usurae cohibet; ideo circa hanc materiam veritatem declarare et dubia elucidare, quantum Deo investigacionis nostrae attingere poterit, in hoc opere propositum nostrum est. In primis igitur inquirendum quot modis accipiatur apud doctores. Secundo de materia ejus propria, et diversis modis et speciebus ipsius incidit. Quarto an semper sit per se malum, et unde malum in ea. Quinto de translatione usurarum, scilicet ratio dubii vel periculi valeat excusare vitium usurae in istis contractibus, in quibus secundum aliquos es

reales habeant excusare usuram. Deinde inquirendum est de vitio usurae. Et primo quomodo incidit et quomodo in contractibus venditionis et emptionis. Secundo, utrum in emptione reddituum ad vitam incidat vitium usurae terminum, carius quam valeant in tempore venditionis. Quarto, de his qui committunt aliis mercatoribus tertia vel media portione lucri. Quinto, de bonis orphanorum quae committuntur tutoribus, vel parentibus. Sexto de campsoribus, et commutatione camporia, utrum in ea sit vitium usurae. Septimo de mercatoribus remanentibus, quia paratam pecuniam acceperant ab eis alterius generis, quae in nundinis tantum valebunt primo quare fieri debent. Secundo cui vel quibus. Tertio a quibus. Quarto qualiter, scilicet utrum publice tantum aequivalens. Sexto utrum fructus et proventus ipsarum sunt restituendi. Septimo utrum cogi debent.

Quoniam autem scientia humana a signis ad res, et a sensibilibus ad intelligibilia procedit, sicut experientia a modico error in principiis, seu ignorantia ipsorum maximum in prosecutione ad finem generat errorem, ideo habemus prius intelligere, quid nomine usurae significetur apud auctores. Cum enim nomina sint signa rationis, non disceptatione veritatis ipsarum; ideo ipsis nominibus pro rebus utentes, necesse habemus scire quid ipsa nomina grammaticos ab usu dicitur: et significat primo suo intellectu rem quae per usum alicujus rei acquiritur, secundum quod tendendi est dicta. Sed quia grammaticus circa signa principaliter versatur, non propter res quae significatione denotant, verbi gratia quod aliquando per modum substantiae, aliquando per modum accidentis substantiae, per modum accidentis, actui signum attribuitur; ideo ipsae voces a physicis auctoribus magis referuntur ad designandum aliquo genere rerum: propter quod cum frequenter a physico vel a logico non instituantur voces significationem naturam, contingit quod physicus vel logicus una voce res plures designat; et sic fit aequivocatio vocum. Quia proprietas aliquid generaliter et universaliter significat, ad aliquam rem specialem ipse physicus designat per similitudinem aliquam, aliquando per contrarium: verbi gratia, nomen apostoli ab actu mittendi generaliter ad missos speciales Christi, et adhuc singulariter ad personam Pauli, quando sine objectione dicitur. Physicus philosophatur, sive naturaliter, sive mathematice, sive theologice. Et logicum nominamus, qui de sermonibus per modum nomen usurae accipitur a naturalibus vel moralibus philosophis et ab auctoribus divinis ad designandum provenientem, secundum quamdam singularem usus rei rationem. Cum autem jure naturali omnis res quae fructum magis quam incrementum pariat, et maxime in materia aeris hoc apparet: ideo et usura secundum rationem propter quod dicunt philosophi usuram dictam, quasi usu aeris acquisitam: unde et illud Psalm. 14: *pecunia considerantes justis et injustis rationes, subtilius exponentes nomina haec designantia, large extendunt huiusmodi proveniunt ex usu omnium rerum per similem usum et rationem, et non tantum pecuniae. Et ideo vocantur rei quam parit usus, similis ei a quo primo dicitur usura: sicut habetur Ezech. 22: *usuram et superabundantiam meique oblita es, dicit dominus Deus*. Et sic accipit ibi usuram, et superabundantiam cujuscumque rei, quae est usurae incrementum, quod parit pecunia ex usu suo. Secundario autem etiam significat superabundantiam pecuniae. Et ideo, quia talis superabundantia aliquando oritur ex usu contra legem, aliquando vero ex usu multipliciter accipitur. Aliquando enim accipitur in malo, sicut quando fit ex usu contra legem; aliquando etiam invenitur acceptum tripliciter. Uno modo quando est secundum legem divinae caritatis, ut illud Mat. 23: *nummulariis, ut et veniens ego recepissem utique quod meum est cum usura*. Alio modo quando secundum legem *coacervat divitias usuris et foenere liberali, in pauperes congregat eos*: et illud Prov. 19: *foeneratur domino legem est justitiae et aequitatis, ut illud Psal. 71: *ex usuris et iniquitate redimet animas eorum, et appropinquabit***

nomine designatur superabundantia praemiorum in futura vita, respectu meritorum vitae praesentis. Secundario modo praesenti vita respectu gratiae datae. Tertio modo designatur superabundantia poenarum juste debitae. Quia dicitur usura spiritualis magis quam corporalis. Alio vero modo dicitur usura superabundantia rerum communium. Quia usurae significat vitium quoddam de genere avaritiae, quod gignit cupiditas, quae radix est omnium malorum. Unde usurae, condemnatur usura communiter a doctoribus. Ex his ergo patet quid significetur nomine usurae, a doctoribus.

Nunc autem ad eam significationem usurae, qua superabundantiam vel incrementum rerum corporalium convertentes, dicamus quae primo sit ejus materia propria, et quae species, et qui modi. Materiam vero e determinatam tribus conditionibus: quia omne quod in usum hominis venit, determinabile numero, ponitur hoc ita declaratur. Jam enim declaratum est, quod nomen usurae, secundum quod ipsa utuntur doctores, superabundantiam sive incrementum ex usu alicujus rei proveniens. Quare cum superabundantia sit extrinsecus moribus, oportet quod aequum et justum in moribus sint determinata in rebus, ex quibus superabundantia quarum usu dicitur innasce superabundantia damnabilis, determinatae non essent in ratione justae et aequae ratione injustae et inaequae. Res vero quae in usum hominis veniunt, determinari tantum possunt in ratione secundum numerum, per quem aequale et inaequale determinantur generaliter in omnibus rebus, quae communi per quam aequale et inaequale communiter determinantur in rebus continuis, secundum quod in usum hominis hujusmodi: tertio secundum pondus, per quod aequale et inaequale determinantur specialiter in aliis rebus, ut aequari et dividi, sicut praecipue sunt metalla et aera. Nec aliis modis, nec pluribus nec paucioribus possunt determinari: quia omnis res talis aut est distincta et discreta ad invicem, aut non. Si sit discreta, cum omnibus tunc necessario secundum aequitatem, quae per numeros demonstratur, oportet ipsas res in quantum sunt commutari volumus aequitatem determinare inter domum et lectum, quae sunt res distinctae et discretae, oportet quod utriusque: et si sint domus quinque, et lectus unus, tunc aequitas erit, si quinque lecti addantur domibus, sic est in omnibus rebus a se invicem distinctis et divisis. Si autem res sint indistinctae, jam non possunt determinari modis: scilicet aut per mensuram aliquam determinatam, sicut quando res habet quantitatem per se divisibilem terrae: aut per pondus aequale, sicut quando res non est facile divisibilis et tota ejus bonitas consideratur, ut aurum et argentum. Et ideo quia superabundantia, quam vocant auctores usuram, extremum dicit respectu, oportet quod materia usurae per haec tria praedicta cognoscatur et determinatur, quia extrema communis non tantum pecuniae sive numismata dicuntur materia usurae, sed etiam omnes res quae numero, pondus, et mensura veniunt: propter quod dicit Scriptura Deut. 23: *non foenerabis fratri tuo ad usuram pecuniam, nec fruges, nec vineam, nec oleam, quia omnis haec res venditur et emitur*, corporalis secundum leges communiter duae: una quae dicitur communiter usura sortis, quae est quando res commutatur quaeritur; alia quae dicitur usura usurarum, quae proprie dicitur improbum foenus, quae etiam hominem commutat ponderis, distinctione quaest. 7: tria. Et haec dicitur usura usurarum, quia etiam ipsae usurae quae sorti commutantur ad partem sortis. Sunt etiam duo modi usurarum, alii a praedictis, a jure condemnati, scilicet usura quae est tantum. Alia vero dicebatur emiola, ab emi, quod est medium vel malum, et olon, quod est totum annum, de his habetur 47 dist. cap.: quoniam multa. Ex his ergo liquet in qua materia usura contingat, et quae et quomodo.

Cum autem videamus superabundantias particulares ex multis rebus quae nec nomen nec vitium tenent, etiam quae aliqui lucrantur humanis laboribus et justis contractibus, jam declarandi sunt actus, per quos usus usurae sibi acquirat. Quod autem principaliter ex actu et per actum commutativae justitiae, qui dicitur mutatio, habeat usurae, probatur primo per doctores sacrae Scripturae. Legitur enim in Exod. 22, sic: *si pecuniam mutaveris fratri tuo, non urgebis eum quasi exactor*: et sequitur: *nec usuris opprimes eum*. Item Deut. 23: *fratri autem tuo absque usura non dabis* declaratur. Quia cum de usura sit sermo, secundum quod dicit incrementum ex usu alicujus rei elicatum, et non homine, duplex potest esse usus, ut dicitur 1 Polit. Unus et proprius est ipsius rei usus, quo ipsa res referatur ad calciamenti calciatio. Alius est usus non proprius rei, licet per se insit; sed quo per ipsam rem commutatur, ut per venditionem vel permutationem; ut cum pecunia vel alia res per ipsam acquiritur. Cum igitur usus proprius determinetur, eo quod omnia quae possideri possunt, propter hominis utilitatem et vitam facta sunt et commutabilia, et usus hujusmodi rerum genita, boni rationem habet et non mali de se: propter quod ex tali usu usura quae est innascitur. Est ergo consequens, quod ex usu rei secundo modo dictae est usus, qui est ex commutatione rei, contingit: quia aut est ad finem convenientem, aut praeter finem convenientem. Si primo modo, tunc adhuc ad finem convenientem fini. Et hoc est dupliciter. Unus et primus modus est, per modum liberalitatis solum, ut in commutatione ex crescentiam, eo quod liberaliter transfertur ad alterum possessio rei et usus ejus. Alius modus est debitorum, ut aliqua res et usus ejus commutatur et transfertur per adaequationem justam alterius rei vel usus, sive sit res corporali. Et notandum, quod res quandoque simul cum usu ejus transfertur juste, ut in venditione et emptione, et non possessio rei, sicut et in accommodatis rebus et locatis. In his ergo quae liberaliter transferuntur justum et reprehensibile naturaliter invenitur. Finem autem convenientem dicimus, utile et necessarium vitae humanae.

ex usu rerum per modos praedictos innata, in relatione ad finem convenientem, caret ratione usurae. Si a modum, sic est usura. Quare oportet, quod ratio usurae inveniatur primo et per se in actu aliquo praedicti conveniente, vel utroque. Constat autem, quod proprius usus rei et per se est in relatione ad finem convenientem omnis usus sortiatur rationem boni simpliciter, consequens erit, quod in abstractione a fine huius vel illius specialiter. Specialis ergo ratio usurae secundum quod condemnatur ut vitium, non erit ex quaerere, sicut et furari, ut habeat necessaria vitae humanae. Sed non propter hoc excusatur a vitio usura rerum, accidit ratio usurae. Praeterea per superabundantiam quae ex mutuo ratione mutui accidit, usura scilicet superabundantia quae ex collatione gratuita accidit, non habet vitium, quia non corrumpit liberalitatem fuisset collatio gratuita. Similiter illa superabundantia quae ex justa permutatione seu venditione accidit, venditio justa vel permutatio; illa vero sola superabundantia quae ex mutuo ratione mutui procedit liberum quia mutuum gratuitum fieri debet de natura mutui: hoc enim significatur Lucae 6: *mutuum date, nihil in mutuum datur*, quando meum vel tuum mihi vel tibi datur. Item justitiam corrumpit, quia in mutuo dati non inaequalitas paritur. Ex his apparet, quod in solo actu mutui, circa commutationem rerum, primo et per se proprie accipitur, ut superabundantia ex usu rerum condemnabilis. Invenitur autem similitudo vitii huius superabundantiarum ad hoc vitium, ut infra dicitur.

Jam ex dictis potest adverti, unde ratio vitii in usura huiusmodi sit. In omni enim actu hominis malum accedit naturam actus factus ad finem convenientem naturae non refertur: ratio enim boni a fine convenienti in contrarium fit legi scriptae vel infusae. Et utroque praedictorum modorum invenitur malum in usura: nam determinetur per naturam ipsarum, etiam commutatio ipsarum quae inventa est propter usum proprium ipsius. Quare si fiat praeter finem convenientem et non referatur ad finem propter quem est, erit de natura permutatio rerum propter augmentationem ipsarum et multiplicationem, jam fit praeter finem convenientem ibi finis conveniens esse non potest. Quod facile videre possumus in homine avaro et usurario, qui semper magis ac magis semper augendos et multiplicandos, et tamen nunquam satiatur: quanto enim locupletior philosophi credimus, tam illi deest quod habet, quam quod non habet; et ideo in opibus cumulandis per usura in infinitum intenditur: quia quanto magis acquiritur, tanto magis intenditur, et magis infiniti ratio. Polit., cap. 5. Quaecumque enim sunt ad finem aliquem, finita sunt. Cum ergo usura dicat superabundantiam intentionem et rationem ipsius nominis, necessario dicet id quod est praeter finem commutativae naturae humanae, quae de se finita est in suis indigentibus. Et hanc rationem ponit philosophus non tantum in usu numismatis; sed etiam in omni commutativa, in qua tantum lucrum et multiplicatio rerum intenditur pro Polit., cap. 5, in fin., ubi sic dicit: duplici quidem existente lucrative, quam vocat crismaticam, hac quidem ipsam pecuniam; hac autem iconomica, idest quae servit ad regimen domus et civitatis, vel ad bonum communitatis iconomice servet laudata, quia finita, et ad debitum finem secundum naturam ordinatur; translativa autem commutativam, per quam res transfertur de uno ad alium, non propter proprium usum rerum et necessarium multiplicentur divitiae. Et quia translationis huius gratia factum est numisma, sicut dicit ibid. Philosophus numismatum, pro multiplicatione ipsorum. Et ideo sequitur, quod non est secundum naturam translatio translationem pecuniae: et hoc est quod sequitur: *sed ab invicem est*: quia scilicet translatio fit pecuniae per se humanae: et ideo rationabilissime odio habetur talis commutatio, quae dicitur oboletica, idest ubi datur de ejusdem generis ad augmentum. Et haec odio habetur, quia ab ipsa fit possessio numismatis et usus ejus factum est translationis gratia, idest ut per ipsum fieret translatio aliarum rerum secundum quod ad vitam congregationem et ad affectum sunt avaritiae. Et statim philosophus descendit ad huiusmodi lucra, secundum quam vocant thokon Graece, idest partum Latine, eo quod numisma seipsum parit in usura, idest quia per augmentatur. In mutuo vero transfertur numisma propter se tantum, et non propter finem necessarium thokos autem fit numisma etiam numismate. Itaque et maxime praeter naturam et rationem ista pecunia in mutuo pecuniae pro augmento pecuniae. Et ideo dicit maxime respectu illius acquisitionis quae fit in contra et contra naturam, adhuc peior est quae fit per exercitium turpitudinum corporalium; sed ista est maxime acceptorum, quod non faciunt primi duo modi. Sic ergo patet, quomodo natura inest malum in usura, et per nos possumus ostendere in usura malum incidere specialiter propter naturam actus proprii ex quo incidit, quod

proprius, ex cuius corruptione generatur usurae vitium, ut in praecedenti capitulo declaratum est, et huius ostendemus, necessario quicquid actui accidit quod liberalitatem tollit, ipsum actum a natura sua avertit et corrumpit. Quare rationem injuriae habet; et sic rationem culpae. Quod autem dare mutuo rem suam aliter ex genere actus qui est ipsa datio, quia designat liberalitatem dantis. Quod autem liberalitatem tollit, aut interioris, aut debitum importat aequitatis: quicquid enim transfertur ab uno in alium per violentiam, non per necessitatem naturae, sicut in successionibus heredum, non datur, sed relinquitur. Item quod transferuntur in venditionibus et permutationibus rerum, et remuneratione laborum, magis redditur quam datur. Quare non attendi, nullo modo liberalitas debet corrumpi. Sed huiusmodi actus, scilicet dandi, vere attenditur in actum. Quare si aliqua circumstantia addatur huiusmodi actui, quae liberalitatem dandi corrumpat, erit huiusmodi circumstantia addita, quodcumque datio mutui fit pro aliquo lucro, sive in spe, sive in re; eo quod illud sequitur, quod semper ibi malum et peccatum est, non solum ex natura finis et materiae suae, sed etiam ex ratio etiam non minor assignatur ab aliis, scilicet ex parte injustae possessionis usurarum: quicquid enim male acquiritur et male possidetur, et peccatum in acquirente et in possidente generat. Sed sic est in usu enim fit suum de non suo, sine justo titulo et per fraudem rei non suae, injuste acquiritur et injuste possidetur. In justo titulo et per fraudem rei non suae, ut patebit statim. Quare injuste acquiritur et injuste possidetur. In dominum non potest fieri justo titulo, nisi tribus viis: scilicet aut per jus naturae, quando scilicet res de per mortem; qui modus non est in translatione usurae. Aut per jus gratiae et liberalitatis, quando scilicet autem via videtur aliquantulum usura excusabilis eo quod voluntarie dicitur dare dominus incrementum usurarium vocamus eum qui non mutuatur gratis, sed pro spe alicujus incrementi, quod tunc accipit, vel spe aliquod incrementum, vel dare velit; tamen ex parte accipientis vel sperantis huiusmodi incrementum, tunc quo est actus huiusmodi: et ideo non fit suum jure liberalitatis, quod accipit, quantum est ex parte ipsius gratiae. Aut potest fieri suum de non suo, jure aequitatis: quod est, quando secundum aequitatem juris fit emptionibus rerum; vel laboris, sicut quando laborantibus redditur merces laboris. Constat autem, quod iustae possessionis et acquisitionis. Primo, quia huiusmodi contractus non habet rationem venditionis et verborum, et ex translatione pecuniae, vel rei datae mutuo; quae de sui natura data est sive determinata voluntate transferentis: propter quod si ultra exigitur quam datur, injusta est commensuratio: nihil enim accipitur, non gratis, nec jure naturae. Secundo etiam apparet iniquitas in acquisitione usurae, quia fraudis malum per viam fictae aequitatis. Quod sic patet. Foenerator enim rem vel pecuniam transferens, ut per semper aliquam aequitatem in acceptione superabundantiae praetendit: quae non potest esse nisi tempore receptionem sortis. Et hoc patet; quia secundum prolongationem temporis vel abbreviationem augmenta foenerator de tempore recompensare intendit illud quod plus accipit quam dederat. Tempus autem commutatur aequaliter. Quare huiusmodi foenerator de re non sua, et quae est aequaliter accipientis et dantis, et recompensare rem acceptam, fraudem facit et proximo cuius est tempus, quod sibi vendit, et Deo cuius re nec labore aliquo fit recompensatio in contractu vel acquisitione usurae; quia tantum lucratur foenerator in feriis communibus. Quare ex his omnibus consequens est, quod superabundantia usurae nullo jure vel est de sui natura et vituperabile, quia voluntate fit humana. Ex praedictis etiam liquet, quare quaedam usurae concessae sunt tamquam licitae; quia quodcumque usura potest accipi ut sua res aliquo justo titulo, et res violenter detinentur, et sunt aliorum secundum veritatem, et per usuram acquiruntur vel detinentur. Jam dictum est. Sed quantum et quale sit, erit declarandum. Nam secundum theologiam usura condemnatur Ezechiel. 18: *qui universa haec detestanda fecerit, morte morietur*: et enumeratur in praedictis usura. Ergo indignum. Praeterea, Ambrosius in Lib. de bono mortis, et habetur 17, quaest. 4: *si quis usuras acceperit, et usura differt a furto et rapina*: quia furtum et rapina nullam habent speciem aequitatis, eo quod per violentiam praetendunt in republica aliquam utilitatem, sed potius pacis reipublicae subversionem: usura vero aliquam aequum et justum ut beneficio exhibito reddatur aliquod emolumentum, quamvis secundum rei veritatem tantum ex gratia, quod est benevolentia et gratiarum actio. Similiter in usura aliqua utilitas videtur praeter hereditates, et vitantur damna quamplurima; propter quod etiam leges humanae eam permittunt et non his igitur patet, quod usura sit malum vituperabile secundum legem naturae, et peccatum mortale secundum modum de genere rapinae et furti.

Cum autem dictum sit, quod usura in genere furti et rapinae contineatur ut specialis modus, et hujus non alicujus rei alienae invito domino; non immerito quaeritur a peritis, utrum usura sit vera res aliena, et non doctoribus solet quaeri, utrum in usura transferatur dominium. Et quia hujus quaestionis duplex reperitur theologice magis procedunt, simpliciter affirmant in usura non transferri dominium; alii vero qui jura scilicet dominium dicunt. Ut autem veritas secundum nostram intentionem appareat, hoc capitulum subjungimus non transferri dominium, sunt quaedam auctoritates, et ex his rationes consequentes. Dicit enim beatus Augustinus 5: *quid dicam de usuris, quas etiam ipsae leges et iudices reddi jubent? An crudelior est qui subtrahit vel eripit, haec itaque atque hujusmodi, male utique possidentur*. Ecce quomodo beatus Augustinus dicit, quod sicut subdit ibid.: *et vellem ut restituerentur*. Sed non est restituendum nisi quod est alienum et non suum; quia enim et suum contraria sunt, et non incidunt in idem simul. Item Augustinus in Lib. de Verb. Dom., Tract. 1. Sed constat quod quilibet de suo potest eleemosynas facere. Quare videtur quod usurae non sint in proprio restituenda alicui, nisi illi qui est verus dominus ejus. Quare cum una res simul habere duos dominos non potest, usura restituenda sit secundum legem divinam ei a quo accepta est sicut vero domino, sequitur quod res non erat translatum in accipientem usuram. E contrario vero movet quosdam legistas et jurisperitos, scilicet quod dominium non transfertur, semper est restituenda vero domino eadem numero, a quocumque possideatur non judicatur. Si enim aliquis accepit equum vel pecuniam vel rem aliam quamcumque in usuram ab alio, non secundum leges, sed tantum sufficit si valorem rei restituat. Praeterea. Si foenerator equum acceptum in usuram, quod transfertur dominium, et quod non competit repetitio ejusdem equi illi qui foeneratori equum dedit, sed foeneratorem, non posset foenerator alteri dare vel vendere transferendo dominium quod non habebat. Quare ratione naturali videtur idem: quia accipiens mutuo una et eadem voluntate mutuum petit, et lucrum sive incrementum voluntas qua petit mutuum libera et non coacta, erit similiter et voluntas qua promittit incrementum libere promittitur. Quare et libere incrementum hujusmodi reddetur ab eo qui est verus dominus rei. Sed si vero dominus possessorum, vere transfert dominium. Quare videtur in usura vere transferri dominium etiam jure naturali restitutionem ejusdem rei numero, et legibus humanis quae non compellunt ad restitutionem usurarum, sed leges alienas, et lege naturae conantur ostendere, qui sunt hujus opinionis, quod in usura transfertur dominium, si sunt res alienae, quo modo vendi vel dari possunt tamquam propriae? Ex his itaque surgit non immerito quaeritur quod aliter judicat lex divina alienum, aliter lex humana. Lex enim divina alienum dicit quicquid possidet non omnia quaecumque possidentur ab alio, si praeter voluntatem Dei possidentur, injuste possidentur, et iniuste. Expresse dicit beatus Augustinus ad Macedonium: et habetur 14 quaest. cap. 5: *quid dicam? Nonne omnes res alienum possidere convincimus?* Hoc enim certe alienum non est, quod jure possidetur. Hoc autem jure, quod male possidetur, alienum est; male autem possidet, qui male utitur. Sic ergo patet, quod foenerator non est rapinarum, quia uterque male possidet: et ideo alienum possidet, et non suum: sed verus dominus id quod dedit, quod secundum legem Dei, in usura non est translatum dominium: et ideo lex divina jubet restitutionem secundum legem divinam, quae in canone sacrae Scripturae et in decretis sanctorum patrum et Conciliis continetur. Lex autem humana voluntatem hominis qui dominus rerum est, secundum leges humanas accipitur vel detinetur. Quare cum contra voluntatem hominis qui dominus rerum est, secundum leges humanas accipitur vel detinetur, contra voluntatem hominis detentio contra illius hominis voluntatem qui putatur dominus ab omnibus hominibus, juste lex humana non potest. Sed id quod in usura accipitur vel detinetur, non videtur esse contra voluntatem dantis, eo quod nec per legem humanam usuras non judicat res alienas. Sed dubitatur adhuc ex dictis. Si lex divina judicat usuram vero ejusdem rei numero? Ad quod respondemus, quod quantum est ex lege divina, debet compelli foenerator restituere in potestate foeneratoris eadem, nisi per assensum repetentis liberetur; alias tenetur pro ipsa valorem rei restituere foeneratoris, sed consumpta est, vel translata in alterius dominium, qui est verae fidei possessor; tunc contra legem divina. Sed adhuc dubitatio oritur, quo modo foenerator rem alienam possit transferre in dominium alterius. Respondeo, quod non judicatur, non potest; sed secundum quod sua est. Verum quia lege divina judicatur aliena, debet et eadem restituere consensu domini veri. Quomodo ergo quis potest retinere res datas vel emptas a foeneratore, quas scit fore restituendum, sicut qui retinet rapinas vel furta qualitercumque data vel emptas sine consensu domini veri? Non considerat justum cujuscumque personae, vel justum, in quantum per hoc ordinatur ad finem, qui est vita aeterna, sed ordinantur homines inter se in bene esse civile, quod est vivere in honestate et pace communi. Lex autem humana ubicumque per opera civilia homo potest ordinari vel deordinari a fine vitae aeternae: sicut etiam tota natura

indigentiam, sed propter divinae virtutis excellentiam, quae per se operatur aliqua, et quaedam per naturam dominium justum in persona tantum acquirente et detinente, non autem proprie corrumpunt bonum civis dantis simpliciter sunt acceptae; ideo sufficit iudici qui secundum legem Dei iudicat, quod foenerator tantum restituat, quantum accipit contra legem Dei. Sed quia res accepta non est faciens injustum ex parte dantis propter rationem solam ex parte foeneratoris; ideo eandem rem non compellit iudex per legem aliquam. Propter haec ergo quae dicta sunt, credimus in usura non transferri dominium secundum legem divinam.

Quia autem quaedam verba juris inveniuntur, quibus ratio dubii et pericula eventuum videntur omnino excusare et contractibus; ideo considerandum est, quando et in quibus contractibus et quomodo valeant excusare. In primis, quod regula est generalis apud omnes doctores, et firma esse debet, quod nulla conditio sive circumstantia tollat habitum, nisi secundum quod potest tollere rationem vitiositatis ab eo. Cum enim Hebraei excusantur a foeneratore propter praeeptum superioris domini res non suae factae sunt suae. Si igitur dubium vel periculum excusare valeat, non est usurae vere dictae. Et quia in mutuis vitium usurae adnexum est ex eo quod fiant spe lucri, quod est contra naturam sua natura non tollunt hanc vitiositatem a mutuo quando fit spe lucri, nec dubium nec periculum excusantur a foeneratore decretalem, naviganti. Si enim quis pecuniam alicui naviganti commiserit mutuo propter spem alicujus lucri, nihilominus iudicatur usurarius, etiam si totum amiserit. Et similiter si quis alicui aliquam pecuniam dedit, ita quod si infra hoc tempus mortuus fuerit, alter ipsorum liberatus sit a debito, et a mutuo qui ipsum accepit, non annos qui mutuum accepit ducentas quinquaginta libras ei qui mutuum dederat, non excusatur propter circumstantiam tollere rationem vitii usurae, ibi possunt excusare: et hoc est in quibusdam contractibus. Et ad sciendum quando potest, considerandum est circa illos contractus vel permutationes rerum in quibus aliquid plus accipitur quam datur fiat, jam speciem usurae vitiosae committit, eo quod huiusmodi superabundantia, nec ex labore licito, nec ex alterius substantiae valet reduci ad aequalitatem justitiae. Si vero non causa temporis haec superabundantia periculi potest supplere aequitatem justitiae. Verbi gratia, si quis rem aliquam emat pro pretio minori quam tamen percepturus in tempore quo sperat eam plus valituram: vel etiam si quis vendat rem pro pretio minori quam quod tantum valitura erit tempore solutionis; si verisimiliter dubitatur utrum plus vel minus possit valere, talibus ratio dubii excusare potest, et facere aequitatem justitiae, licet plus accipiatur quam detur; eo quod in rebus ex ipsa natura rerum, quae in tali tempore plus vel minus possunt valere. Unde non causa temporis tollit naturam rei, quae plus valet aliquando in uno tempore quam in alio, et aliquando minus. Et hoc modo ratio tollit contractus aliquos, qui alias judicarentur usurarii. Et hoc probatur per illud capitulum, naviganti. Declaratur. Ponamus igitur, quod aliquis post Augustum multa de blado vel de vino habeat venalia, et pro illo tempore vini decem, et vendet bladum pro quatuor solidis, et vinum pro duodecim, recepturus tamen pecuniam in pretio etiam si statim reciperet, eo quod rem suam aestimabat tantum valituram probabiliter in praedictis. licet plus accipiat in spe quam det tempore venditionis, quia illud non accipit causa temporis, sed pro natura rei potest tantum valituram in tempore pro quo vendidit, etiam si non valuit tantum in tempore pro quo vendidit contractus, etiam quando res minus emitur quam valeat tempore emptionis, recipienda tamen in alio tempore vel minus sit valitura quam empta sit. Sicut autem dictum est de ratione dubii in mutuo et in contractibus, periculi etiam circa sortem non tollit rationem usurae in mutuo, ut probatur in capitulo, naviganti. Et huiusmodi quibus videtur superabundare acceptum super datum; potest excusare scilicet quando ipsa ratio periculi tollit. Res enim quae extra periculum possidentur ejusdem speciei, plus aestimantur, quam eaedem existentes. Recompensatio, quae propter periculum aestimatur plus vel minus valere.

Quoniam autem videmus quasdam conditiones, quae secundum jura videntur excusare contractus simpliciter: *23: non foenerabis fratri tuo ad usuram; et sequitur, sed alieno.* Quare videtur usura quae accipitur ab alieno rationem culpae: et sic videtur quod conditio personae, per quam est in dispari cultu, excuset usuram. Si *illo exige usuram, cui merito nocere desideras: cui jure inferuntur arma, jure auferuntur usurae.* Ex quo patet excusat vitium usurae. Tertia etiam conditio sumitur atque reperitur in jure ratione dotis, vel paternae pignoris: dotem aliquam hereditatem vel fundum vel redditus annuos, pro aliqua certa summa pecuniae in pignore dotis, quamdiu ratio impignorationis manet. Et hoc habetur Extra. de usuris, cap. salubriter. Quarta conditio accipitur in pignore, est illius qui accipit in pignore de jure, sed de facto detinetur violenter ab alio, tunc patet quod ut suum recipit, et non ut alienum. Et hoc habetur in prima Decr. de usuris, capit. pluris. Quinta conditio damni recompensatio, et non spes lucri, ut si quis mutuo dederit gratis, usque ad terminum aliquem de necessitate, et mutuum non fuerit redditum ad praedictum terminum, potest mutuans repetere ultra sortem solutionis. Et hoc modo potest fidejussor repetere usuras a debitore, quas persolvit creditori, propter decessum in Duab. decretalibus. Excusatur etiam sexto usura, quando gratis aliquid offertur ultra sortem; quia secundum *5: oblatio nullam culpae maculam alicui ingerit, quae non ex ambientis petitione procedit.* Causa vero proprie quando, satis liquet et patet, si advertatur quod in praecedenti capitulo dictum est, quia scilicet nulla potest esse malum, vel e converso, nisi quae tollit de natura sui rationem bonitatis vel malitiae. Usura autem secundum mutuis, et secundario in aliis contractibus. Usura autem in mutuis vitium est. Primo, quia corrumpit liberam rationem vitii tollit ultima conditio, scilicet quando gratis aliquid ultra sortem datur vel accipitur. Corruptum accipitur spe lucri, et sine recompensatione justa; et etiam hanc malitiam tollit prima conditio, et secundum Deum esse dominum omnium rerum, et omnia esse data ad cultum Dei promovendum: et ideo virtute fidei super lucrum. Similiter in secundo fit zelo justitiae et caritatis, quae quantum potest, inimicos fidei, scilicet tyrannos, quando non potest aliter res ipsorum quam per usuram requirere. In quinto vero patet ratio justitiae, quod damni: et ideo illa superabundantia juste acquiritur. Contingit etiam aliquando usuram accipere in aliis contractibus sine causa. Et hoc etiam excusari potest omnibus modis praedictis, et duobus etiam aliis. Et hoc potest contingere suum jure naturae; sicut fructus pignorum pro dote uxoris, vel pro provisione filiorum. Vel potest fieri suum quando secundum aequitatem erat illius qui fructus percipit. Haec dicta sufficiant de conditionibus excusationis excusare, et quando non.

Quoniam autem antiqui hostis superseminata humanae naturae zizania cupiditatis et avaritiae, usurae vitium veritatis in Scriptura sacra manifeste condemnata eradicatur: sed etiam in aliis contractibus diffudit, in quibus abscondita foeneratur, idcirco in hac parte quaerentes detegere hanc malitiam, de his contractibus in quibus principio dictum est, quod usura est quicquid praeter sortem accidit, sine justo titulo, sive sit in mutuis, sive in temporis accidit in contractibus, sicut in mutuis, sorti accidit sine justo titulo; quia ipse facit suum per fructum datum communiter omnibus. Et non potest habere titulum successionis naturalis, seu gratuita donationis vel per recompensationem rei propriae. Et hinc est, quod omnis contractus in quo aliquid plus accipitur quam sortem causam temporis, vocatur contractus usurarius: et hoc est quod dicitur in illis decretalibus Extra. de usuris, quid proprie dicatur hic sors, et quid sit accidens sorti: sors enim in Scriptura sacra duobus modis accipitur: res confusae ab invicem, secundum illud Proverb. 18 cap. *contradictiones comprimit sors*: et iterum Prov. *temperantur*: et illud Act. 1: *cecidit sors super Matthiam*. Alio modo accipitur sors pro officio, vel re propria personarum vel possessionum: sicut vocantur sortes filiorum Israel, justae portiones distinctae cuilibet tribui etiam hic pro re juste possessa vel debita alicui personae. Hoc autem dicitur sorti accidere, quod non per se proprius rei alicujus et fructus ejusdem non accidunt sorti: quia qui habet proprietatem in alia re sive possessione ideo qui emit agrum vel equum ut plus percipiat in fructibus ratione fructuum, et ratione usus equi quem emit, est de sorte, scilicet fructus et usus. Est etiam secundo advertendum, quod fructus et usus rerum possunt accidere temporum. Et hoc potest accidere ipsis rebus tripliciter, sine eo quod tempus sit causa per se. Uno modo per naturam rerum. Alio modo propter ipsarum rerum paucitatem et abundantiam: res enim quae per usum suum minuuntur et augentur pauciores: quoniam magis elongantur a sua origine: sicut bladium naturaliter magis abundat in autumno quam in primavera, quae secundum tempus recipiunt incrementum valoris, ut apparet in satis, sylvis et animalibus. Tercio modo per

ergo generaliter tenendum, quod in omnibus contractibus in quibus accipitur plus a vendente vel emente in usu rei sive in natura ipsius rei, nec producta fuerit ex temporis aliqua conditione existente in ipsis rebus incrementum ex dilatione temporis concessa a vendente vel emente, ut per hoc plus accipiat; tunc talis contractus a vitio usurae tenet vitium, quia sine justa ratione generatur in talibus contractibus et mutuis: et hoc vocatur a vitio ad credentiam. Si autem accipiat plus quam detur simpliciter propter aestimationem vendentis vel ementis vel ex aliqua trium causarum praedictarum, vel etiam propter dilationem rei in uno tempore quam in alio, tunc talis contractus hujusmodi recompensatur ex ampliori valore rei in se pro tempore pro quo accipitur hujusmodi superabundantiam tamen advertendum, quod in his contractibus, licet excusari possint a vitio usurae secundum rationem dicitur propter quod dicitur in canone turpe lucrum, ut habetur 14 quaest. cap. 4: si quis clericus, et cap. quaecumque ratione temporis accidit sicut usura, licet differenter. Vel turpe lucrum dicitur ratione finis, quia tales contractus non propter necessitatem seu utilitatem, sed magis propter divitiarum augmentationem, quam cupiditas facit, quae non habet ideo rationem vitii habent. Si tamen hujusmodi contractus ordinentur ad usum vitae humanae, excusantur a vitio usurae allegatis, 14, quaest. 4. Et per hoc etiam ostenditur, quod in hujusmodi non sit usura, quia usura non excusatur a vitio necessitatem. Ex his etiam potest patere, quod non tantum ex dilatione temporis, sed ex natura rei relata ad locum similiter ex natura rei relata ad loci conditionem: scilicet quando aliquae res dantur mutuo, sive pecunia, vel mensura. Et tamen quia mutuans sperat eandem rem numero plus valituram in tempore determinato quam reddendam ad tale tempus vel talem locum, ut in tempore determinato, vel in determinato loco sibi reddatur plus speratur ex mutuo, vel causa mutui, quam detur. Et eadem ratione potest incidere vitium usurae in aliis contractibus simili ratione, ut verbi gratia, si quis bladum vel vinum vendiderit vel emerit in aliquo tempore ut plus accipiat in loco, licet etiam res pro tempore illo tantum valeant, jam propter intentionem usurariam fit vitium usurae, si non attendetur, et non temporis vel loci causa, quae nullo modo sunt aliquid de re: et ideo nec vilitatem nec augmentum in eodem contractu secundum speciem potest incidere vitium usurae ex intentione corrupta et vitium augmentum etiam potest fieri sine omni vitio, quando fit propter necessitatem vitae. Ex dictis etiam dissolvitur dubitatio, quod anticipationem temporis generari possit vitium usurae, sicut per dilationem vel prolongationem: ut verbi gratia, si persolvendos post annos, vel annuatim ad duos vel tres terminos, et creditor vult remittere debitori tertio principio anni, sive ante terminos positos, quando petierit. Constat autem quod in hoc casu plus accipitur quam juste debebat centum solidos, et propter anticipationem temporis tantum solvit octoginta. Accipit ergo ultra datum creditoris erant illi viginti, et sunt facti debitoris ratione temporis anticipati. Ratione ergo regulae datae contra contractum, quod plus accipitur quam datur causa temporis, videtur quod hujusmodi casus sit usurarius. Sed hic potest cadere excusatio, si liberaliter creditor hujusmodi superabundantiam tribuit debitori, et debitor non causa temporis accipiat plus quam recompensat hujusmodi superabundantiam: ut quando non potest habere pecuniam sine alicujus rei pro quo quod petit ante terminum solutionis: alias est casus usurarius. Specialis autem difficultas videtur in contractibus, quod ex temporis processu recipiunt incrementum valoris vel vilitatis; sicut sunt sata, fructus animalium, fructus vinearum, venduntur et emuntur ut frequenter ante tempus suae utilitatis vel usus, et minus emuntur quam sint valiturae non immerito, utrum plus accipere pro eis vel sperare pro tempore suae receptionis faciat usurarium contra regulam, quia aut emens ex tempore emptionis jam habens dominium talis rei qualiscumque sit, recipit periculum rei in primo modo, volunt contractum esse licitum propter periculum: sicut locans rem suam et aliquid ultra rem locatam remanet in locante, ut habetur distinct. 88: emens. Si vero secundo modo, tunc condemnant contractum. Si primo modo, non habet locum: si enim locans accipit aliquid ultra rem locatam, hoc habet rationem aequitatis, quia illud est proprietatem locantis, et pertinet ad ejus sortem, id est ad rem locatam, cujus proprietatem simpliciter manet apud locantem. Sed quando quis vendit rem aliquam, non usum tantum ipsius, sed proprietatem ejus; contra regulam ementem. Quando ergo sic vendens res hujusmodi tenet periculum penes se, jam sic non transfertur dominium rei. Sed constat quod emens jam transtulit dominium pecuniae quam dedit: quare magis habet rationem mutui quam determinatum quam sit datum, sequitur quod sit vitium usurae. Et ideo sine praejudicio aliter mihi videtur de hoc praecipue quia videmus non de facili imminere periculum rei in venditione spoliolorum, sive nemorum, sicut in venditione tamquam necessariae ad usum vitae ementium, vel causa lucri tantum. Si primo modo, nullum est vitium usurae receptionis: dum tamen aestimatio justa sit facta tempore contractus, quae est secundum legem naturae, et res tantum juste aestimari potest res vitae humanae, quantum necessarius est ejus usus: et hoc vel simpliciter vel simpliciter apud sapientes plus aestimatur res perfecta quam imperfecta, et pro tempore determinato aestimatur ideo licet tales res minus vendantur imperfectae quam sint valiturae perfectae, non videtur mihi quod aliquid vitii sit in eis est ipsius ementis, cum incremento suae valitudinis atque utilitatis. Si autem secundo modo, id est causa

tantum turpe lucrum judicari causa cupiditatis, quae oritur ex conditione temporis, sicut supra dictum est. Quando hujusmodi lucrum quaeritur tantum ex tempore, et periculum tollitur, vel verisimiliter dubitari non potest, ut res temporis res possint valere. Haec intantum dicta sint universaliter circa naturam contractuum, in quibus

Quoniam autem in praecedenti capitulo de aequitate et justitia contractuum simpliciter secundum propriam naturam de contractibus ad tempus factis et non simpliciter discutiendum. Et circa hoc investigatio duplex est: primo, utrum reditus vel possessiones ad vitam, quae est tempus indeterminatum, liceat. Secundo, utrum emere aliquam rem ad decem annos vel ad viginti, sit licitum: quae duo frequenter fiunt inter homines nostri temporis. Circa primum ipsorum, qui hujusmodi contractum condemnant tamquam usurarium. In primis autem fatemur nos nusquam in epistolis extravagantibus, seu in corpore legis, pro hac opinione facientem aliquid. Sed in scriptis canonum et circa hoc ratione, quantum poterimus, dicta confirmare conabimur. Goffredus siquidem magnae auctoritatis decretalium, ita dicit in titulo de usuris, cap. is qui naviganti: ibi expresse dicit, quod dare certam pecuniam aliquibus possessionibus tenendis ad vitam dantis pecuniam et post mortem tenentis reddituris ad ipsam causam reddit dicens, quod dans habet spem vivendi ultra id tempus quo receperit de proventibus totam pecuniam usurarium. Haec est ratio dicti Magistri et sententia ejus. Hoc etiam quidam alius doctor theologus asserit, quod hujusmodi contractus non potest excusari per rationem dubii vel periculi, quia non est alterius rationis causa, nisi ut recipiat decem quamdiu vixerit, et sperat se victurum ad undecim annos et ultra: vel ut in undecimo anno moriatur, conditione, quod si ante moriatur, quod nihil accipiat de tota summa. Constat autem in hoc secundo contractum dubii vel periculi, sicut probatur per illud cap. naviganti. Quare similiter in primo contractu erit vitium usurae accipiendi plus. Per hanc rationem vult idem doctor, quod tam vendens quam emens peccent vitio usurae, si spe plusquam dederat, sic et vendens, quia sperat, vel saltem optat cito finem ementis. Et si acciderit in praesentem, accepit quam dederit. Hoc autem vitium in vendente nullus quidem quem audierim verbo, vel scripta videtur. Theologus opinionem hujusmodi quasi sententiam confirmare videtur ex philosophi dictis, qui in duobus locis, scilicet in ratione numismatis, ostendens quod inventio numismatis facta est translationis gratia, hoc est, ut per ipsam transferantur: et ideo quando fit numismatis translatio ad alterum ut seipsum augeat et multiplicet, fit turpe, ut philosophi. Quare cum in emptione reddituum ad vitam fiat translatio pecuniae ad hoc ut seipsam multiplicet, Praeterea ex lege divina videtur haec sententia data, Levit. 24, ubi dicitur: quando vendes quippiam civi tuo, juxta numerum annorum jubilaei emes ab eo, quod juxta susceptionem fructuum vendet tibi. Hoc autem non est cetera. Hic secundum litteram moraliter informat, ut in contractibus proximis compatiamur, ne quis nimis, ne studeat possessiones aliorum acquirere, sed indigentibus commodare, et commodata paulatim ex fructibus reddere. Videtur quod quando quis emit possessiones proximi sui percepta sorte ex proventibus fructuum, non licet, si vitam possessiones vel redditus, sperat ultra sortem datam aliquid accipere, et recipit si vivat ultra secundum sortem secundum legem divinam. Hoc idem videtur per ea quae dicta sunt de causa usurae: quia in talibus contractibus, quod quam detur, causa solius temporis; sed haec causa facit contractum usurarium. Horum autem et tantorum contractuum cum tantorum et multorum antiquorum et modernorum dissimulatione contraria sententia teneatur, videtur, ut discutiatur veritatem, quantum nostrae Deus dederit parvitati. Sciendum autem in primis, quod cujusdam contractus hujusmodi contractum condemnabat non tamquam usurarium, sed tamquam vitiosum propter circumstantiam, quod vendens optabat mortem emptoris. Sed etsi hoc malum sit, non tamen est ex natura contractus, sed accidens contractus: unde secundum praedictum doctorem, si fierent hujusmodi contractus ad vitam vendentium, non possit inesse in hujusmodi contractibus, et utrum licite fieri possint, et quomodo, contradicentium rationi, quod alicujus rei, dominus est et usus ejusdem rei. Dicimus etiam secundo, quod dominus verus alicujus rei potest pro pretio et pro commutatione alterius rei. Dicimus insuper tertio, quod dominus potest transferre usum et fructum rei, sicut potest dare vel vendere proprietatem rei, vel usum, seu fructus alicujus possessionis sicut

vendere quantum ad tempus determinatum vel particulare. Omnia ista probantur per veram rationem de pensari debet tantum rei substantia et valor ejus secundum rationem substantiae, et non secundum rationem secundum rationem mutui; et ideo nihil ultra valorem rei sperare debet mutuans ex usu rei mutuatae, quod est ratione usus. Alias est autem in accommodatis ad usum. Substantia enim rei in se non recipit magis et minus non tantum substantia rei, sed etiam ejus fructus et usus. Sed ex fructu rerum et usu ipsarum accidit quod minuitur: quare de natura hujusmodi contractus potest quis sperare ultra id quod datur, vel etiam timere, sperare possunt lucrum ex mercatione, quod non possunt dantes mutuo. Advertendum est etiam, quod si omnis rerum commutatio inter homines fit propter necessitatem vitae humanae: et ideo requiritur quod non habere in valore, secundum quod magis et minus habent de utilitate et necessitate ad vitam humanam. Vel et minus: uno modo ex tempore; alio modo ex loco; alio modo ex ipsarum conditione; alio modo ex ipsarum rei substantia cum usu ejus vel simpliciter, vel ad tempus. Et quando simpliciter, constat quod plus recipit fructus ejus translata sunt quantum ad omne tempus cum rei substantia. Quando autem in venditione trans aliquid tempus, et non simpliciter, non est justum secundum rei naturam, quod tanti res aestimetur, cuius semper possidetur; quia non sequitur ex ea tanta utilitas humanae vitae possidenti: etiam si plus accipiat aliqua injustitia: et praecipue quando emens habet intentionem emendi pro necessitate et utilitate vitae, in emptionibus aliis facit peccatum, secundum philosophum. Videntes autem ut in pluribus semper attente Ecclesiae, vel civitatis; et non causa lucri hoc faciunt, quare magis excusantur. Dicimus etiam quinto, quod si dederit in possessionibus emptis simpliciter, eo jure recipit aliqua plusquam dederit in possessionibus emptis quicquid plus accipit; eo quod substantiam rei cum usu et fructu ejus emit, sicut et ille qui ad omne tempus sententiam, utrum vendens retinere possit substantiam quam accepit, quando nihil aut parum emens super ratione dubii et periculi, quod erat de natura hujusmodi contractus, fit suum. Et haec ratio excusat in contractibus in mutuis, quia ibi accidit ex alio quam ex ratione mutui. Quando enim de natura contractus incidit periculum quam ementis, tunc etiam juste fieret res quae emitur vel venditur minoris aestimationis in valore, quam contractus: et ideo de natura sui justus est contractus, cum ex utraque parte similiter dubium sit, utrum melius equum homo emat, et centum libras pro eo solvat; constat quod si eadem hora post solutionem equus melius detinent, quamvis nihil utilitatis emptor consecutus fuerit, eo quod rem suam juste transtulerit in ipsum tempus indeterminatum, cujus determinatio pendet a natura, et non ab homine, et tempus determinatur suam transtulit, et translatio jam ad ipsum redit ex natura contractus. Praeterea considerandum est, quod utraque aequae libera voluntas vendentis et ementis de natura contractus invenitur: et maxime quando divites vendunt de natura contractus, quia uterque talia facit pro utilitate sua propria: neque enim dives cogitur vendere, neque dare aliquid diviti vel mutuare, neque dives tali pauperi tenetur de suo aliquid dare. Quare et omnis translatio sequitur, quod quicquid emens vel vendens amplius accipiant quam dederint, juste accipiunt, et ut suum potest ista justitia inveniri, quando amplius accipitur in lucro ex mutuo: nam accipiens mutuum libera voluntate accipiens mutuum non libera voluntate amplius promittit vel dat, sed quasi coactus ex perversitate mutui in spe lucri facere: et ideo non potest fieri illud amplius ejus qui accipit eodem jure quo mutuum, quod sibi dedit, quod tum propter justam aestimationem rerum in tempore contractus, quia tantum res aestimatur juste, tum etiam propter periculum aequaliter adnexum ipsi contractui, tum etiam propter liberam voluntatem dominorum res transferentium cum suis proventibus, fit hujusmodi contractus autem de natura sui; quia per accidens potest in ipso contractu vitium turpis lucri incidere, et etiam aliquando ratione usurae tunc in ipso incidit, quando aliquis dives sibi sufficiens ad vitam, et secundum rei naturam redditus emit ut divitior fiat, et ut plures divitias sine justa et pia necessitate acquirat: et ideo turpe lucrum humanae vitae, sed propter avaritiam, cujus non est finis, exercetur. Vitium vero usurae tunc ex hujusmodi paupertate tales redditus invitus vendit, vel possessiones suas pro necessitate cogente: et hoc propter defectum etiam incidit usura, quando divites hanc proximorum necessitatem considerantes, minus justa aestimatione acquirendis, quorum necessitates si possunt sine damno, ex caritate fraterna tenentur relevare per mutuum apparet ex textu, et Glossa inducta, quae dicit: necessitati proximorum compatiendum, et ne quis de necessitate commodare, et commodata paulatim de fructibus agrorum recipere. Ex his patet, quod in tali casu venditio mutuationis; et etiam quod aestimatio ementis est minus justa propter necessitatem vendentis: et ideo in tali casu non est justum titulum possessionis. Unde in hac consideratione non tantum in emptionibus ad vitam incidere potest, sed simpliciter, quantum ad omne tempus. Est ergo universaliter advertendum, quod quodcumque aliquis recipit simpliciter causa lucri, quod tantum expectatur ex ipsa tantummodo ratione temporis, et non ex natura rei

lucrum dicitur turpe in jure. Si vero ematur hujusmodi possessio causa lucri, et fuerit justum ex caritate in paupertatem deveniat, sicut lex antiqua praecipiebat, tunc hujusmodi lucrum ex emptione vitium usurae accipitur quam detur sine justo titulo possidendi rem. Si vero aliquis rem alterius emat non causa lucri, sed etiam si plus accipiat processu temporis quam dederit tempore contractus; cum hoc accipiat ex natura contractus nullum credo fore vitium. Quomodo autem satisfaciamus dictis et rationibus adversariorum, exponamus auctoritate canonis confirmatur: secundo quod exemplum ejus tunc veritatem habere dicitur, quando Ecclesia possessiones suas, quas non potest nec vult simpliciter alienare: tunc enim non est venditio proprie, sed possessionem aliquam vendere simpliciter, nec potest vendere eo jure ad tempus. Constat enim quod licet jus possidendi non possunt sine auctoritate et consensu superioris praelati nec simpliciter nec ad tempus impignorationes, propter quod secundum hanc viam usurarius est hujusmodi contractus, quia fructus percipiuntur de natura sortis. Ad rationem vero dicti Magistri de spe vivendi tantum quod amplius recipiat quam dedit amplioris non facit vitium usurae, nisi quando illud quod speratur vel recipitur, amplius sorti accidit, et non animalia ut plus recipiat in proventibus processu temporis, vel in ipsis rebus venditis in alio tempore, esse dominus transfert dominium suae rei cum usu ejus et fructu simpliciter sive ad tempus, constat quod omne quod accidens sorti: quare talis spes vel amplior acceptio non facit contractum usurarium: et hoc dico salva re alio doctore theologo, videtur nobis respondendum, quod est dubium duplex: scilicet excusans, et dubium tollit inaequalitatem, et justam aestimationem dati et accepti facit quantum ad rerum commutatarum naturam annuatim pro centum, quos statim solvit, ad vitam suam vel alterius accipiendos. Et considerata utilitate quae sit major minorve propter indeterminationem temporis: et ideo fit aestimatio aequivalens propter justitiam aestimationis: et ideo quidquid plus ultra datur vel accipitur sive ab emente sive a vendente, tantum respectu lucri vel damni potest incidere ex determinato tempore, illud non potest aestimari, quia quia speratur aliquid plus proventurum gratia temporis determinati tantum, quod non valet facere justam proportionem, non sunt ejusdem rationis: nam in eo qui sperat centum et decem simul se accepturum in undecim annis recompensatio inaequalitatis, et sic facit usurarium contractum; sed in alio qui non sperat se plus accepturum juste secundum naturam, tunc, ut ostensum est, nihil accipitur ultra sortem, sed totum speratur ut suum, sed temporis, sed propter naturam contractus. Illud etiam quod secundo adducitur pro confirmatione hujusmodi contractus. Primo quod intentio philosophi, ut apparet ex dictis suis, est quod numisma inventum est causa translationis necessarius: et ideo quandocumque aliquis utitur translatione numismatis ut per numismata alia ejusdem generis inhonestus contractus, et vocatur thokos, idest parens rei. Hinc constat mihi, quod hujusmodi contractus redditus pecunia emantur ad vitam, tamen ex natura contractus non habetur quod ad hoc emantur ut per necessarias res necessariae vitae humanae emantur. Et hic finis contradicit fini propter quem fit thokos. Alia etiam ratio in hoc contractu non pecunia numerata, sed ipsae res emuntur, quae vel per fructus suos referuntur ad hunc fructum seipsas, ut triticum, vinum, oleum et hujusmodi. Thokos autem est, ut dicit philosophus, numisma numismatis hujusmodi contractu, ex hoc accipitur, quia tunc secundum philosophum thokos est, quando acquiritur per similia sibi. Constat autem quod quando similia ex similibus generantur ad multiplicationem, quod generatur per se. Sed qui dat centum libras, ut habeat decem annuatim quamdiu vixerit, constat quod non est ibi ratio in potestate vel dominio dantis cum sua genitura, sed penitus sunt translatae ab ipso: nec manent etiam in re vocari hujusmodi contractus transmutatio rei pro re, quam generatio alicujus rei ex re. Ex his apparet quod contractibus. Ad id vero quod de lege divina contra hujusmodi contractum propositum fuit, dicendum est quod dicitur divina, sed tamen est temporalis, sicut et aliae leges multae, quae tantum secundum litteralem servationem observantia jubilaei non manet in populo Christiano, ita et leges quae propter jubilaenum datae erant, quae iterum si consideretur id quod morale est in lege ista, quam exponit Glossa inducta, invenitur nihil facere contra perversas intentiones divitum ementium, qui, secundum quod dicit Glossa molesti, de pauperum necessitatibus aliorum acquirere, quando tenentur ex fraterna caritate eis indigentibus accommodare, et accommodata evidentem apparet quod hoc accidit in hujusmodi contractibus, et non est de natura contractus, in quo fructus per se lex nec Glossa de se inficit vitio usurae hujusmodi contractum per naturam, sed tantum per accidens. Ad id veritas, si praedicta ad memoriam revocantur: quia tempus potest referri ad aliquas rerum permutationes modo si causa temporis plus vendatur vel minus, non erit hujusmodi contractus usurarius: pluris enim a quoque autumno ceteris paribus, hoc est quantum est de natura temporis; et ideo si quis accipiat plus de blado vel quando bladum emit, non judicatur usurarius, dum tamen pro illo tempore solo velit bladum vendere, et ut appretiantur decem librae ad omne tempus annuatim, quam ad aliquod tempus particulare: vel plus et ju

et hoc ex natura temporis. Et tamen non judicatur usura, si quis emit decem libras ad omne tempus, id quod ex tempore illud plus sibi accidat et certitudinaliter. Quare nec similiter is qui plus recipit de eo quod ad usurarius. Et haec est una causa, quia per naturam temporis facta est res sua cum suis proventibus: et idem contractibus tempus considerari ut nihil conferens vel auferens de valore rei ex natura temporis, sed tantummodo. Quando ergo ratione temporis sic accepti aliquid plus accipitur vel speratur quam detur, jam patet vitium accipitur, nec ex natura rei recompensatur, nec gratis datur vel accipitur: et ideo nullo justo titulo potest de emptione et venditione reddituum et possessionum ad vitam dicta sunt a nobis. Rogantes universos quod per ignorantiam male diximus, et corrigant, quia sine praejudicio et hic et alibi semper intendimus quae investigandum est de secunda parte hujus capituli, scilicet de contractibus, in quibus certi redditus vel possessiones gratia, aliquis habet redditus certos, ut ex parochia vel praebenda, vel ex patrimonio, vel aliunde, et hujusmodi vel ad aliquod tempus determinatum, ut simul habeat paratam pecuniam. Et quaeritur utrum haec licite accipitis. Et videtur quod sic: quia secundum quod jam dictum est in praecedentibus, plurius valoris aestimantur dividua. Et iterum vendens hujusmodi redditus tantam utilitatem aut frequenter majorem ex tali venditione indulget clericis cruce signatis, quod possint vendere fructus beneficiorum per triennium: hoc autem non contra hoc est aperte, quod de usura dictum est: quod in hujusmodi contractu plus accipitur, vel saltem contra periculum nec dubium jam in hoc contractu ex natura sui accidit: quare simpliciter videtur usurarius ex parte hujusmodi contractibus ex parte vendentis non incidit vitium, quantum est de natura ipsius contractus. Contra quibusdam, quod ex parte ementis sit contractus usurarius, eo quod plus recepturus est, non tantum in sorte temporis. Quando autem minus quod est in dato respectu accepti, recompensatur illi respectu superabundantiae contractum usurarium, eo quod hujusmodi superabundantia transfertur sine justo titulo. Mihi autem videtur contractum, et justum esse quantum est de natura contractus. Potest autem fieri injustus per accidens dum debita fratri: scilicet quando emens videt fratrem in necessitate pro salute corporis seu pro salute animae redditus seu possessiones suas, tunc emens si dives fuerit, potens sine damno proximo subvenire, dico sine pignorum praedictos redditus vel possessiones accipere, donec receperit quod accommodaverat. Et hoc per modo potest fieri injustus contractus ex parte ementis propter corruptionem finis debiti, qui est ad utilitatem et augmentationem divitiarum fit, tunc est turpe lucrum: sed primo modo reducitur ad usurae vitium. Sed per se justum ostendunt. Unum est ipsa vendentis liberalitas, qua potest rem suam dare gratis, vel permutare per nullum incidit vitium in emente, quia id quod accipitur, totum est de voluntate libera domini. Aliud est ipse venditur pro tanto quanto aestimatur juste, sive a venditore et emente, sive ab his qui sunt legis positivi vendens non potest plus habere pro tempore pro quo vendidit, et etiam res futurae per tempora non sunt instanti, nec tantam utilitatem inferunt possidentibus: propter quod oportet quod sint minoris aestimati quia quod plus accipitur quam datur, est de ratione sortis, eo quod emens totum emit quod eventurum est propriam accipit, sicut nec ille qui emit redditus ad omne tempus. Hae sunt rationes hujusmodi contractus contraria, quae videbatur ostendere usurarium contractum: quia etsi plus accipitur quam detur, hoc fit de sorti, sed est de ipsa sorte ementis: sicut etiam plus accipitur quam detur in his possessionibus quae emuntur tantum sint dicta de his quae ad tempus venduntur et emuntur.

Quia jam diximus quod in contractibus vitium usurae tunc incidit, quando res cariores venduntur propter tempore venditionis, et videmus hanc rationem fere in omnibus venditionibus fascellorum lignorum, quod idcirco non immerito circa hujusmodi contractus investigandum est, utrum justitia possit inveniri in hujusmodi venditionibus. Videtur quod simpliciter sint usurarii: quia propter tempus tantum carius venduntur, vel pro tempore in quo minoris utilitatis sunt, et ideo minoris valoris: quare si tunc pars illorum pro parata pecunia detur pro maiori, non esset pecunia parata, ergo tantum propter temporis dilationem reliqua pars carius venditur. Sed hoc non dubitatio duplicatur, quia invenitur in dominis principalibus, qui sylvas et nemora vendunt per mensuras, et dominis emunt sylvas per mensuras, et ex ipsis fascellos faciunt, quod ulterius vendunt per numerum. Ut videtur tempus, vendunt carius ligna, quam valeant tempore venditionis. Si ergo ea quae venduntur sive tunc sive tempore venditionis sint minoris aestimationis secundum justitiae aequitatem quam vendantur, et ultra justam aestimationem tempus futurum, videtur sine omni excusatione esse contractus usurarius: quod potest probari Extra. eod. tit. de usurariis, quando aliquis merces suas longe majori pretio distrahit, si ad solutionem prolixi temporis dilatare persolvatur; et quod eorum quae taliter sunt accepta, compellendi sunt ad restitutionem. Sed contra hoc videtur Ecclesia. Praeterea secundum justitiam unaquaeque res pluris debet esse pretii et aestimationis et in tempore in quo non est ita conveniens et necessarius usus ejus. Sed vendentes sylvas et fascellos et hujusmodi, vendunt convenientior, quam sit in tempore venditionis ipsorum. Quare carius possunt aestimari et vendi, quam videtur credo sine praejudicio, posse excusari hujusmodi contractus a vitio usurae: et quando verisimiliter est de tempore solutionis. Et hoc probatur Extra. eod., cap. in civitate. Non ergo propter dilationem solutionis in prolixo tempore ultra justam aestimationem rerum, quae in tempore futuro quo determinata est solutio, sunt plus valiturae pro tempore venduntur; et sic non plus accipitur quam datur ratione temporis tantum, sicut praetendebant rationes in contractibus datum et acceptum pro tempore pro quo fit venditio. Unde advertendum est, quod credentia pretii personae potest incidere in contractibus sine vitio, tribus de causis. Uno modo per gratiam et liberalitatem venditoris, qui aestimationem justam pro tempore venditionis et commutationis ipsius rei, et ipse venditor expectat solvere quam habet ad emptorem. Et hoc modo caret credentia omni vitio, nec facit contractum vitiosum. Alio modo per vitio secundum meritum et justitiam ipsius contractus, et non per gratiam venditoris; ut verbi gratia, si quis vendat tantam utilitatem et necessitatem humanae vitae, sicut in futuro aliquo tempore habitura est secundum meritum vendere pro illo tempore in quo habet majorem necessitatem seu utilitatem, et in quo plus valitura sit quod venditur, natura contractus, quod venditor saltem expectet tempus illud pro quo facit majorem aestimationem pretii in contractu, nec in contrahentibus. Et hoc probatur extra eod., cap. naviganti. Tertio modo potest incidere in contractibus paupertate seu impotentia emptoris. Et hoc modo vendere carius rem suam quam valeat tempore venditionis tempore, quo solummodo determinatur, potest excusari a vitio, per intentionem venditoris, licet ipse contractus intendat vendere carius, non propter tempus tantum, sed tantum propter damnum quod sibi videt imminere propter vexationem suam redimendam quam probabiliter timet futuram sibi in repetitione debiti sui, propter quod excusatur a vitio, et fit aequitas aestimationis in hujusmodi contractibus, per recompensationem damni, propter quod accidere: et tunc rectitudo hujusmodi intentionis apparet, quando venditor optaret potius non vendere tempore, sed libentius daret aliis pro minori pretio in continenti persolvendo, quam vendere ad credentiam talibus personis pro contractu usurarium: scilicet quando propter ipsam credentiam res venditur carius quam valeat simpliciter tempore, vel etiam si tantum sit valitura verisimiliter, tamen ipse venditor alias res suas non venderet, nisi plus acciperet, quando de sylvis praedicti contractus per mensuras, et de lignis per fascellos possunt licite fieri, et quando de hujus capituli videtur dubitatio: scilicet utrum liciti sunt contractus, quando pro minori pretio in continenti venditur bladum in terra in tempore hyemis et sylvae adhuc per tres annos vel amplius cresciturae, ante aptum tempore suae collectionis et receptionis; verbi gratia, bladum in terra tempore hyemis datur pro minori pretio, quod colligitur: et sic de sylvis et de nemoribus. Et videtur contractus usurarius ex parte emptoris; quia pro dilatione patet ex propositis exemplis. Et haec ratio facit contractus usurarios, ut saepe praedictum est. Praeterea, videtur rationem dubii vel periculi, quia non dubitatur verisimiliter, quin valiturae sint hujusmodi res amplius in tempore datum est pro eis in tempore emptionis. Sed contra hoc est, quod uniuscujusque rei aestimatio justa dependet de tempore, quod non est tanta utilitas vel necessitas alicujus rei imperfectae, sicut est ejusdem perfectae: quare nec res imperfecta, et longe a perfectione sua, sicut cum jam est perfecta. Sed hujusmodi res ementur in tempore pro pretii quam sint valiturae in tempore suae perfectionis. Praeterea illud quod per naturam temporis accretum emit terras fructiferas vel arbores, vel animalia fructifera, quicquid evenit per naturam temporis, et non per contractum hujusmodi terrae et cetera. Quare cum per naturam temporis segetes in terra satae, veniant ad majorem

provenit ultra pretium datum, juste fit illius qui emit ipsa, et cedit in propriam sortem: quare nihil accipitur. Et haec credimus sine praejudicio melioris sententiae. Hoc autem dicimus quantum ad naturam contractus, non posset esse turpe lucrum, quando scilicet tantum intenditur ab emente augmentatio lucri et divitiarum, per se sine dubio periculi probabiliter possibilis evenire. Et alio etiam modo potest esse contractus usurarius: quod congruum ex necessitate, propter quam emptor fraterna caritate tenetur venditori mutuum dare, si indiget, secundum se, non pro dilatione temporis plus accipitur ab emente, sed pro natura et utilitate rei facta ve-

Nunc de his quae committuntur bonae fidei aliorum ad lucrum quaestio est. Et haec quaestio duplicatur: de commissione aliarum rerum quae per se veniunt in usum hominis, ut sunt agri, animalia et horti. Quare vitium usurae incidere. Primo, quia nihil videtur differre secundum naturam rei committere pecuniam bonae fidei in mutuo pecuniam propter lucrum aliquod, etiam si periculum propriae sortis super se accipiat, usurae vitium non incidit. Quare similiter qui committit pecuniam suam bonae fidei alterius spe lucri, usuram committit. Si ultra sortem speratur vel accipitur, accipit quod nullo justo titulo possidere potest; quia nec gratis datur, nec recompensatur: quare simpliciter injuste possideri vel sperari videtur. Praeterea, etsi in commissione aliorum rerum excusatio valere; tamen quia pecunia de se nihil parit utilitatis ultra seipsam, videtur quod saltem in commissione pecuniae quod est vitium usurae secundum philosophum, hoc est partus sex numismatis ex numismate, quod est contra naturam, quod aut commissio fit pecuniae, ita quod transfertur dominium in toto vel parte rei commissae in potestatem committentis non transeat dominium, sed remanet tota res commissa in dominio committentis. Primo modo est vitium usurae, si jam erat translata per commissionem in dominium alterius; et in hoc assimilatur mutuo, ut ratio prima a vitio usurae, quia tunc commissa est pecunia vel res alia sicut servo et ministro, qui de re domini negotiari potest sperare lucrum, sicut ex re sua et sic non accidit sorti, nec possidetur sine justo titulo; quia sicut res domini ex numismatis ex numismate immediate, sed partum ipsarum rerum, quae per numismata sua sunt acquisitae, in toto vel in parte, ideo dictum est, quia si aliquis committit centum alicui, ita quod medietatem ei mutuet, quod quod de illis centum debeat negotiari ad lucrum ille cui committitur; dico quod hoc lucrum jam habet vitium usurae. Si commissa speratur, sed etiam pariter ex re mutuata et commissa. Sicut enim in logica, locutio falsa iudicatur, si significet; sicut si dicatur, homo volans est animal; ita in moralibus actio vitiosa iudicatur, quando vitio per se veritas secundae quaestionis, scilicet quando res fructuosae ad lucrum committuntur. Notandum tamen, quod liquet iustitia permutativa: quia quando ager vel terrae committuntur excolendae ad lucrum, satis apparet, quod nihil ultra percipitur de fructu propriae rei. In animalibus vero, ut quando oves vel boves vel porci committuntur, iustitia: quia aliquando solet in huiusmodi commissionibus fraus usuraria permisceri, ut quando excluditur. Verbi gratia, aliquis dat centum oves ad nutriendum propter lucrum, ita tamen quod centum oves sibi seorsum potest incidere fraus usurae; et hoc quando ultra justam aestimationem taxat ipse committens sibi portionem sollicitudo nutrientis secundum justam aestimationem. Solet etiam et alia fraus in talibus fieri, quando dominus vel boves nutriendos emat ad lucrum illius qui mutuum dedit, et ad lucrum ipsius alumni: dico ibi fraudem, quod huiusmodi lucri ex mutuo oritur: et ideo vitio usurae inculpatur huiusmodi commissio. Tunc ergo huiusmodi vitium vel similitudo mutui non permiscetur in talibus, sed dominium retinetur cum periculo quod communiter in commissione commissae communicatur ei qui eam suscipit ad lucrum nutriendam, et simile periculum communicatur alumni, qui taxatur lucrum, per quod iuste recompensatur labor et sollicitudo alumni. Et haec de materia dicta ad pra-

Quia vero quaedam in consuetudinem deducta habentur pro justis legibus, quae magis deberent dici contra naturam, videmus in hac materia usurarum secundum regiones et civitates diversas quantum ad pupillorum et orphanorum investigandum censemur, utrum a vitio usurae excusari valeant pupilli, cum ad aetatem perfectam perveniant et liberati secundum leges a tutoribus, et tunc proprias hereditates et bona in quibus successerant, aucta per se saltem integra et non imminuta, per huiusmodi exercitium conservata. Solent etiam quandoque huiusmodi

etiam sub certa portione supra sortem aliquid tribuere pro parvulis nutriendis, vel etiam pro sorte augm
oppida pupillorum bona recipere, etiam exclusis propinquis pupillorum de tutela; et pro bonis pupilloru
tutoribus puerorum annuatim, salva semper sorte pupillorum. Videntur autem in talibus pupilli excusari
ipsorum, non enim dederunt res suas vel pecunias ad usuram: quare quicquid ultra sortem eis isto modo
lucri, sed sicut gratis datum accipiunt, et sic justo titulo retinere possunt: unde Gregorius, et habetur 1, q
ingerit, quae non ex ambientis petitione procedit et cetera. Secundo quia cum sit parvulus, nihil differt a se
tutores residet usus justus vel abusus rerum parvuli, quare videtur parvulis non imputanda culpa usurae
restitutio facienda ab illo. Contra hoc autem est, quia quod per servum acquiritur injuste, tamquam alien
ignorantiam, quin semper teneatur ad restitutionem, quandocumque sciverit veritatem. Non possunt erg
superabundantias suarum rerum sibi per usuras acquisitas. Ad haec determinanda distinguendum est. P
quia aut acquiritur per fructus ipsarum rerum quae sunt pupillorum, ut sunt agri, animalia et caetera; au
ipsam translationem; et quia pecunia sola translationis causa instituta est, ut dicit philosophus, ideo huj
usus est in translatione rerum fructuum. Et si primo modo aliquae superabundantiae acquirantur pupilli
non invenitur lucrum ex mutuo speratum vel acceptum: tum quia nihil accidit sorti, eo quod fructus ex ta
est de natura sortis, et non accidens sorti. Secundo autem modo adhuc distinguendum est: quia superabu
pecuniae, aut datur vel oritur pupillis ut lucrum ex detentione rerum suarum ortum habens, et hoc modo
rationem alicujus lucri in quantum detinentur, nisi secundum quod utilitatem habent et fructus afferunt.
lucrum, sed ut gratia vel ut donum, tunc licet retinere eis: et hoc modo procedunt duae primae rationes. I
vitium in multis civitatibus: et hujus signum, quod gratis sit datum, accipitur ex eo quod praeter voluntat
quam dant eis, et quod nunquam repetunt nec repeti faciunt a pupillis aliquid. Ex his liquet, quod si tutor
ad usuram per se vel per alios, quod hujusmodi superabundantia rei est aliena, et injuste possidetur etiam
nolunt restituere, tutores ad id faciendum compellendi sunt.

Est autem inter hominum commutationes quoddam genus commutationis in rebus, quod campsoria dicitur
commutatione lucrum non speratur ex temporis dilatione, nec iterum campsori redditur eadem sors in s
Parisienses, et recipit sterlingos, vel monetam alterius generis. Similiter nec habet proprie rationem com
genus fit in rebus appretiabilibus, quarum pretia determinantur et mensurantur numismate: sed hoc gen
generum: propter quod sequitur quod ars campsoria, quae est species commutationis, simpliciter permu
quando aliquid accipitur loco alterius dati, et sic comprehendit omnem commutationem. Dicitur etiam pe
hominum pro re altera similiter habente ex sua natura aliam utilitatem commutatur. Et sic agitur de per
velit permutare parochiam pro praebenda, vel praebendam pro praebenda, et similia. Tertio modo potes
numismatis, ipsa numismatum commutatio. Et hoc modo dicimus campsoriam esse permutationem num
de hoc lucro est quaestio in isto capitulo, utrum juste vel injuste acquiratur. Et videtur tripliciter esse inj
rei procedit, eo quod numisma, secundum philosophum, non parit numisma, sed campsor utitur numism
quod esse debeat ad utilitatem accipientis a campsore, si est justus, vel quod debeat fieri gratis. Tertio, q
templo. Dicendum igitur quod ars campsoria de se est justa. Unde dicendum est ad primum, quod ars car
est ratio, quia illud plus quod accipitur a campsoribus in tali permutatione monetae, non accipitur ration
periculi vel interesse, ut subveniatur salariis pensionum, domorum, ministrorumque, et laboribus et exp
operam et sudorem suum in re licita ad utilitatem aliorum. Ad secundum dicendum, quod ars campsoria
et liberalitatis per ampliorem utilitatem dati apud accipientem a campsore quam accepti ab ipso. Et iteru
natura sua, sicut actus mutui: ideo illud quod plus accipi videtur, transit in dominium accipientis per sim
persuadetur per Evangelium, dicendum est, quod dominus ejecit tales de templo ratione loci, qui tantum
reverentiam loco debitam faciebant suas mercationes, et apparebat in talibus turpitudine suae cupiditatis.
non licet ministris templi, idest viris ecclesiasticis, talia exercere mercimonia.

Est igitur quaestio rursum de mercatoribus. Primo, utrum liceat alicui committere pecuniam suam alteri distinguendum est circa hoc: quia aut est simpliciter commissio, quae fit propriae rei bonae fidei alterius supra cap. 11: aut est commissio secundum quid, sed simpliciter translatio, sicut est in mutuo: commissio committens non retinet periculum super se rei commissae. Et hoc modo propter rationem translationis, usurae: et in hoc casu loquitur illa decretalis naviganti. Propter hoc ulterius si quaeratur de his qui dant mercatoribus, tali pacto quod similem et aequalem in numero et pondere persolvent creditoribus illorum secundum locum et tempus: verbi gratia, Balduinus a Gualtero accipit centum libras sterlingorum mutuo sterlingorum solvet Balduinus pro Gualtero in Januario sequenti, in quibus tenebatur Gualterus suis creditoribus loco et tempore; circa hoc distinguendum est: quia aut mutuans tempore translationis aestimat dictam mutuatam est persolvenda; verbi gratia, sterlingi plus valent in Anglia quam in Francia: et tunc nihil est ibi culpabile sterlingorum futuram ante tempus determinatum. Et tunc dicendum, quod mutuans committit usuram, cum mutuando intendit, sive ex tempore sive ex loco, sed tantum ob favorem et gratiam proximi hoc mutuatur, quod dubitari potest circa huiusmodi materiam. Dictum est enim quod spes lucri in mutuo facit usurae vitium aliquam specialem, quam timet in tempore futuro minorandam in suo pretio secundum statuta legis positum sibi reddendam in aequali pretio quod erat tempore mutui, respectu pecuniae terrae communis aestimatum factum spe lucri, quod sit in eo vitium usurae. Verbi gratia, aliquis habens sterlingos valentes quatuor Turonem legis positivae, tantum sint valituri tertium Turonem, propter quam causam dat mutuo sterlingos, et postea recipere sterlingos in numero et pondere quot dederat mutuo, sed secundum pretium in Turonibus, cuius vitium quod aliud est vitare damnum, et aliud sperare lucrum: quicumque enim ex mutuo speraret lucrum, peccat contra 6: *mutuum date nihil inde sperantes*; sed non sic qui ex mutuo vitat damnum. Primum enim non potest fieri iniuria proximi, cui gratis debuit fieri illud ex quo lucrum speratur, quod est contra gratiam; sed secundum hoc eo quod non prohibetur aliqua lege: nec etiam proximo, quia nihil minus accipit pro tempore mutationis mutuatur, tantum valebat quantum reddere tenetur. Neque etiam propter hoc vitaretur, si tempus a mutuo mutuatur minus valitura, quam valeret tempore mutationis; quia ex sola dilatione temporis non accipitur vitium vel ex natura pecuniae. Nec in hoc damnificatur qui mutuum accipit: quia non ad hoc accipit, ut ipsum usum minus valitura esset; sed ut ipsa uteretur pro tempore illo pro quo valorem suum reservaret, quem habet ex hoc de eo qui dat mutuo bladum vel vinum vel oleum, ad certas mensuras, et hoc in tempore quo minus valent ponderibus et speciebus in alio tempore, quo verisimile est res praedictas plus valituras. Et videtur ex eo quia ibi nihil plus accipitur quam datur, eo quod huiusmodi res numero, pondere et mensura realiter reddunt vitare damnum et non sperare lucrum: quia si res huiusmodi venderentur in tempore quo minus valent, licite potest eas vendere pro tempore illo in quo sunt valiturae verisimiliter, nec est usura, ut habetur Expositio possit eas res numero dare reddendas sibi in tempore quo verisimiliter plus sunt valiturae. Ad quod dicitur accusat, quia vero mutuum debet fieri gratis et sine spe lucri, quandocumque in mutuo et ex mutuo intenditur est in emptione et venditione. Potest autem excludi spes lucri ab intentione dantis mutuo modo praedictum omni tempore accipere rem mutuam, etiam ante illud tempus determinatum quo res verisimiliter debet accidens intendatur, non tamen per se, quia non tollit rationem gratuiti a mutuo. Alio modo quando dans res verisimiliter plus valiturae erant, propter solam damni vitiationem: tunc enim damnum vitat, quando nec sibi magis necessarias ad usum vitae, quas si tunc non haberet, oporteret eas alibi emere, et sic reportare intendens in mutuando excusatur ab omni vitio usurae.

Nunc autem ad id quod tertio in hoc opere declarandum proposuimus accedentes, de restitutionibus usurarum restitutionem usurarum iura obligent, satis liquet ex natura ipsarum. Quia enim superius in prima parte superabundantia usurarum nullo justo titulo possideatur, ideo juste retineri non potest et injuste possideri injuste possidetur et alienum est alicui, alteri proprium esse debet. Quare cum omnis superabundantia usurarum possidenti, sequitur quod sit propria alterius qui ipsa destitutus est. Sed hoc est justum secundum omnem iustitiam restituatur: restitutio enim semper respicit destitutionem. Quare secundum omnem iustitiam naturalem huiusmodi res non sunt ab aliquo destitutae contra omnem iustitiam: praecipue quia videtur destitutio fieri

puniunt, quae tamen injurias punire debent: quare non videtur esse contra justitiam humanam. Ad quod respicit volitum propter se, aliquando propter aliud. Quando autem propter se, tunc si illud volitum sit si opus ex eis procedens bonum est et justum; si autem sit injustum et malum, tunc similiter voluntas est malum propter aliud: verbi gratia, aliquis vult projicere merces in mari, ut sic evadat periculum: illud iterum propter se, justum, aut injustum, aut indifferenter. Et hoc modo primo judicatur adhuc voluntas justa et bona comparative, si vult furari ut pauperibus tribuat. Sed secundo modo potest judicari voluntas justa et libera absolute, quae si est sed est comparative injusta et non libera, quando illud volitum habet malum finem. Unde quod aliquis vult nec injustum: et ideo quantum ad hoc voluntas est absoluta et libera; sed quando hoc vult dare propter rem hujusmodi voluntas comparata ad finem, qui de se est injustus, contrahit rationem injustitiae, et cadit a ratione magis quam agendo incurritur, ideo in ipso dante est poena et non culpa. Leges vero hanc aliquando considerant exterioris inter homines: et ideo leges tales non puniunt, nisi secundum quod hanc pacem destruunt. Alii iuris divini, considerant etiam justitiam veram et interiorem: et sic leges etiam canonicae prohibent et puniunt *justitiae pax*: et ideo qualem pacem quaerunt qui leges condunt, talem sibi vindicant justitiam. Dicimus etiam restitutio usurarum, quia in Scriptura sacra quantum ad legem veterem condemnantur dantes pecuniam pro usurae. Lex autem nova prohibet sperare aliquid ex mutuo: quare magis accipere erit contra legem evangelii, nullam aliam legem potest esse verum aut justum; eo quod lex divina sit prima et universalis origo omnium legum. Nihilominus tamen etiam contra legem naturae, quia in hoc finis conveniens secundum naturam est mutuum dare, conveniens finis ostenditur naturaliter, scilicet communis societas et fraterna caritas in bonum gratis fieri debet naturaliter. Quare quandocumque hujus actus fit propter spem alicujus commodi vel lucrum, fit contra naturam, quare juri naturae repugnat: ideo non tantum fit injustum contra legem divinam, sed

Quoniam autem usurae sunt restituendae, jam oportet investigare, quibus sunt restitutiones faciendae. Est restitutio. Quia secundum ea quae dicta sunt prima parte capit. 5, in usura non transfertur dominium juris, rationem in jure facienda est restitutio ejus quod detinetur injuste. Quare videtur quod soli Deo et Ecclesiae, quod *domini est terra et plenitudo ejus*, a quocumque possidetur juste vel injuste: quare nulla re potest servari regula generalis, quod illi soli aliqua res est restituenda, qui ipsa re vel aequivalenti destituitur injuste. Si injuste possessa est sic nec alicui; vel aliquibus restituenda est nisi illi vel illis qui ea injuste destituti sunt. Si est restitutio, qui juste illarum rerum domini erant, quae restituendae sunt, ante destitutionem injustam. Si expoliati fuerant, jam restitutio facienda est eorum filiis et successoribus, qui juste succedunt bonis defunctorum bona sua pauperibus vel Ecclesiis vel personis aliis, tunc sicut per virtutem testamenti acquiritur jus in bonis pauperibus, vel aliis quibus legata sunt, et sic eis est jus acquisitum in his quae jure debentur ei quocumque defuncti, sive illis locis vel personis quibus omnia bona sua legavit, debet fieri restitutio quae sibi viventibus verisimiliter quibus facienda sit restitutio nescitur, vel forte noscuntur esse in locis et regionibus longinquis vel accedendi ad eos, tunc in primo casu Ecclesiae consilium et auctoritas requiri debet: quia jam ratione patet qui erat membrum et filius Ecclesiae, ad ipsam Ecclesiam: unicuique vero sua Ecclesia dicitur suus episcopus Ecclesiae: hoc tamen superaddito, quod debet ei Ecclesia promittere restitutionem faciendam, si necesse sit reversionem ipsorum quibus de jure erat facienda. Ex praedictis igitur concluditur, quod si a servo vel alicui alio usurario, sive Christiano sive Judaeo acceptae fuerint usurae talium bonorum, de quibus constat ei quod rerum; quod restitutio talium non est facienda eis a quibus acceptae sunt, sed ipsis veris dominis et successoribus hujusmodi restitutio caute, ne cum scandalo fiat personarum praedictarum. Si autem credatur probabilitas servus de voluntate domini sui, et monachus etiam abbatis sui, et raptor et usurarius de bonis juste possessoribus ipsis personis injuriatis: et similiter dicendum est de uxore vivente marito.

Nunc a quibus restitutiones usurarum fieri debeant, consideratio nostra necessaria est. Quod siquidem deus detinet, juste vel injuste detinuit, aliquando ipsam rem vel aequivalentem restituere teneatur, manifestum est, quia non dimittitur peccatum jure divino, nisi restituatur ablatum, si restitui possit. Ergo ab eo cui peccatum Sed non imputatur peccatum nisi ei qui abstulit vel detinet rem alterius, quae non est sua aliquo justo titulo

praecepto juris naturalis habemus quod quaecumque vultis ut faciant vobis homines, et vos illis eadem facite. Si quis spoliator ei restituat. Quare similiter spoliator debet juste restituere spoliato. Sed quis possit dici spoliatus? Primo de uxore marito usurario defuncto. Secundo, utrum teneatur ad restitutionem eorum quae cedunt in usum vitae suae marito ignorante marito, et adhuc vivente. Et quarto de filiis et filiabus. Quaeritur similiter de servis et mercenariis laborantibus et operariis et mercatoribus, qui labores et suas operas et suas res dant usurariis pro lucro, et quinto de accipientibus ab eis oblationes et eleemosynas vel munera, utrum teneantur ad restitutionem. Sexto de exercitio foenerandi, sicut aliquae civitates et aliqui principes fovent et defendunt huiusmodi qui dicuntur huiusmodi actum foenerandi. Ad hoc ultimum primo sciendum, quod sicut socii furum, et hi qui dicuntur socii Scriptura; ita omnes praedicti in quantum agunt aliquid ad vitium usurae perpetranda, vel ut motores, vel ut defensores talium, usurae vitio condemnandi sunt. Et sicut non satisfit Deo de injuria sibi illata, nisi per justam restitutionem. Unicuique vero secundum gradum sui delicti competit restitutio ablati. Verbi gratia si quis tenetur movere actorem ad faciendam restitutionem: quod si non sufficit ad hoc inducendum, debet invocare iudicem. Si negligit hoc facere, puto sine praeiudicio, quod in hoc casu tenetur is qui promotor fuit, ad restitutionem principalis, vel ut adiutor, uterque tenetur ad restitutionem ablatorum omnium in solidum: ita tamen quod non iniuriam proximi. Si vero ut particeps fuerit tantum lucri, aut scienter, aut ignoranter. Si scienter, tunc ita tenetur quando alias commodum non potest inveniri remedium, sicut accidit pauperibus mendicantibus. Et sic aliquando domo parentum usurariorum, qui alias nequeunt victum sibi necessarium invenire: et similiter uxor eadem domo spirituali, sicut et dominus cum publicanis manducabat pro conversione ipsorum. Et hoc fit iterum juste, in spe faciendam: et primo modo artifices et laborantes et servientes, possunt juste aliquando percipere de usurario quantum accipiunt ab usurariis, tantumdem reddunt ipsis per recompensationem operis vel laboris vel alioquin effecti ad restitutionem faciendam. Nihilominus tamen huiusmodi artifices, si credant usurarios nihil habere, peccant scienter usurariis communicando opera sua pro lucro quod sciunt esse rem alienam, et maxime quando participare filii et filiae et uxor in spe recompensandi in aliquo futuro tempore, quando sperant se probare, habebant quando participant. Quicumque vero participes fuerint scienter extra aliquam trium causarum conditionem, si notitiam habuerint, tales ad restitutionem tenentur pro parte illa in qua participes existunt rei alienae. Ita ad quaesita. Ad primum et secundum de uxore, dicendum est quod uxor usurarii tenetur ad restitutionem male acquisita devoluta sunt, vel quantum ipsa, vivente marito, talibus bonis usa est. Quod si nihil de tali re in matrimonio attulerat, fructus erat sufficiens ipsius necessitatibus, et pro omnibus quae expendit in vitam suam faciendam, nisi fuerit usa rebus mariti in spe recompensandi, vel nisi aliquid alienum post mortem mariti retineat alienum. Ad tertiam quaestionem dicendum, quod cum uxor non sit domina rerum, sed tantum vir, est tantum quare sicut nec potest alienare res viri ipso non volente, ita nec aliena viri potest restituere ipso nolente. Ita ad rerum conservationem et multiplicationem honestam et utilem, et super hoc etiam ad salutem viri potest *infidelis per mulierem fidelem*. Quare sicut de rebus propriis viri usurarii potest facere eleemosynas modo faciendam causam viri, id ad quod tenetur ad salutem suam promovendam, et etiam ad bonorum suorum conservandam, quod possit facere restitutiones de rebus alienis, viro ignorante et non prohibente, quia sic agit causam viri potest securius agere potest, quia jam est argumentum quod vir approbat, ex quo non reprobat. Si vero viro prohibente fecerit, vel facere voluerit, jam non licet ei: quia sicut res sunt sub potestate viri, ita et uxor: quare oportet quod apostolum. Et si non in faciendo malum, tamen obedire debet in omittendo bonum, quia non est necessarium sibi videtur bonum, non imputatur ei ad peccatum, sed ei qui hoc ei prohibet. Ad ea quae quarto et quinto quaeruntur participantibus. Ad id autem quod sexto quaeritur de accipientibus eleemosynas et oblationes et munera ab eis, eos usurarios, aut nesciunt nec tunc quando accipiunt, nec post: et si sic nesciunt, non peccant accipiendum vel post; vel necessitate compelluntur ad accipiendum, aut non: si necessitate, non peccant, nec tenentur restituere, aut sunt usurarii notorii, aut non notorii: si notorii, tunc omnis accipiens ab eis peccat propter scandalum restituendum est, sed non eis semper. Si vero non sunt notorii, aut aliquid creduntur habere de bono pro quo faciendum est ab his qui aliquid acceperunt; si vero aliquid, tunc etiam accipi possunt sine peccato ab eis modo obligantur. Ad ultimam quaestionem dicendum, quod ille solus tenetur ad restitutionem qui accipit vel detinet in spe lucri dat mutuuum, nihil ultra acceperit, licet superaverit, etsi sit reus vitio usurae, tamen non tenetur restituere, qui aliquid detinet vel accepit de alieno injuste. Unde fautores et defensores usurae tenentur ad restitutionem alicujus, nisi in quantum sunt participes lucri; scilicet quia propter hoc sunt fautores, tamen in hoc peccant contra Deum, etiam quantumcumque utilitatem regionis vel civitatis intendunt, qui

illis quorum auctoritate fit aliquid, et de his qui foveant, et defendunt, et recipiunt actores: quia illi sunt causa actus, sed accidentium ipsi actui ad ejus conservationem et fructum ampliorem.

Quoniam autem in omni re modus habendus est, nunc de modo quo restitutio usurarum facienda est, res. Deinde utrum prius vel posterius quam solutio debitorum, vel legatorum. Tertio, utrum prius facienda sit aequaliter secundum proportionem ablatorum, vel inaequaliter possint fieri propter conditiones et necessitates. Aliud necessarium est loquendo de necessitate satisfactionis, et aliud loquendo de perfectione ipsius. Ad quantum ad Deum, scilicet humilitas verae poenitentiae contra contemptum Dei; et aliud quoad proximum et proximi. Sed de perfectione satisfactionis ultima exiguntur signa: scilicet et testimonia praedictorum, in quantum ad Deum, et restitutio famae personalis contra scandalum ex peccato innatum quantum ad Ecclesiam. Et quoniam de perfectione, sed etiam necessitatis, saltem publice et in manu Ecclesiae restitutiones faciendas promittuntur salutis, et Christiana sepultura. Et propter hoc etiam dicit apostolus, 1 ad Timoth. 5: *peccantem coram omni homine*. In ordine, sciendum est quod consuetudo fere in omnibus apud nos habet, quod prius persolvantur debita contra legatam, et legata solvantur. Et hujus consuetudinis potest esse ratio: quoniam legata sunt secundum quid donata, et non scilicet quod non est res data simpliciter, nisi per mortem legatoris, unde semper vivente legatore potest legantis post mortem. Et ex his potest patere, quod legata, in quantum hujusmodi sunt, non obligant secundum utilitatem legantis. Quare cum necessaria ad salutem praecedant ea quae sunt devotionis et supererogationis, justitia restituenda sunt ablata quam debita sint solvenda, cum in hoc impleatur justitia tollens injuriam nulla tollitur injuria, sed tantum solvitur justitia: quare secundum hoc videntur prius restituenda ablata quam debita, quod tamen habere potest rationem ex duobus. Uno modo scilicet, quando debita sunt clara et manifesta, et debita clarum semper praecedit obscurum in jure humano. Alio modo quando res quae debetur, est determinata, et debita. Sed determinatum jure praecedit indeterminatum, in quantum hujusmodi. Et ex hoc concluditur quod quod prius per apertam confessionem restituentis, debent jure praecedere omnia debita: quod tamen raro observatur. Unde dicta patet quando prius potest restitutio fieri uni personae quam alteri: scilicet quando restitutio unius personae paribus. Sed iterum si unus sit dives, et alter pauper, et plus indigens his de quibus restitutio facienda est, pauperi potest restitutio juste fieri quam diviti, eo quod plus laesus est in ablatione suorum, et quia plus indiget, scilicet in paupertate vel divitiis, et aequaliter clarum sit de utroque: si uni prius facta sit injuria quam alteri, naturalis, cui prius facta fuit injuria. Itemque, si per partes facienda est restitutio, unicuique proportionata, ita quod si tantum est tertia pars ablatorum, vel media, vel alia quaelibet pars, ceteris paribus facienda est restituentium. Cujus ratio est ut omnibus ostendatur bona voluntas restituendi omnia, si adesset facultas sibi factam, quando videt voluntatem ad emendandum paratam.

Sed ex dictis quaestio oritur de materia et quantitate restituendorum. An scilicet si quis ovem vel bovem, teneatur eamdem rem restituere, aut sufficiat pretium rei acceptae restituere. Ex quibus potest videri, quod duplicatam restituere teneatur, propter illud praeceptum legis Moysi Exod. 22; ubi dicitur, quod fur teneatur quadruplo, bovem vero in quintuplo. Quibus dicendum est, quod aliter judicandum est de furto et rapina, et de dominio jure fori, licet non jure Poli; sed nullo modo in aliis. Unde equus furto ablatum, in cujuscumque jure fori. Secundum vero non sic, si est equus per usuram acceptus. Quare aliter judicandum est in usuris, ratio est duplex. Una est jam dicta: quia quod accipitur ultra sortem, non aufertur per violentiam aliquam.

proprie non dicitur ablatum, sed potius acceptum contra justitiam naturalem et divinam de voluntate da est, etiam si melioratur. Alia causa etiam et ratio est ex natura permutationis, in qua ultra sortem accipit necesse quod idem numero reddatur, sed tantum aequale in pretio; ita nec superabundantia accepta ratio aequivalens in pretio. Quod autem in lege scriptum est de duplo, quadruplo et quintuplo, non habet locum huiusmodi usurae non destruunt bonum reipublicae de sua ratione, sicut faciunt furta et rapinae; sed tantum bonum; et hoc non inferendo malum, sed tantum in non faciendo bene fieri debitum. Et de his alias scripsi haec ad praesens sufficiant.

Quoniam autem, ut dicit dominus, non potest arbor mala fructus bonos facere: et quicquid ex mala radice quam pluribus quod non tantum restituenda sunt ablata vel injuste accepta, sed etiam quod omnis prove restituenda: quia quod ex alieno venit alicui, rationem de jure accipit alieni. Haec videntur expressa Extra reddi res cum fructibus perceptis, et quae percepissent spoliati si ipsa possedissent: et hoc etiam express dicitur quod talis tenetur ad omnia lucra percepta et percipienda. Sed contra praedicta videtur esse ratio spoliationis violentae vel furtivae, de qua loquuntur praedicta jura. Secundo, quia in usuris ipsa superab fructum quantum est de natura sua, eo quod causa tantum translationis aliarum rerum facta est. Tertio e restituendum est damnum quod illatum est: sed tantum non est illatum damnum, ut in pluribus, quantum quod fur labore proprio et solertia rem furtivam multiplicavit, quod non fecisset possessor verus. Quid a praejudicio, quod aliter est judicandum de restitutionibus usurarum, et aliter de restitutionibus furti et r suum, nec divino nec humano. Et ideo injuria fit non tantum apud Deum retinere res sic ablatas, et rerum tam jure fori communis, quam jure conscientiae personalis. Sed non sic est in usuris, quia licet sint contra quod respicit solum debitum gratiae et caritatis; tamen non est directe contra jus humanum, quod respic quoad hoc transfertur in eis dominium, nec habent rationem ablatorum. Constat autem quod jura allegat nulla radix justae possessionis invenitur. Hoc tamen generaliter advertendum est, quod in omni restituti proveniunt ex re restituenda secundum quod injuste possidentur huiusmodi fructus et lucra, et ex eo quod divinam, habent rationem alieni, secundum rationem beati Augustini. Quare secundum Deum retineri no advertendum est, quod hoc solum restituendum est homini, in quo facta est ei injuria de re sua. Sunt aute possidendo fructum et utilitatem; aut quia multiplicantur et augentur ex natura temporis, aut quia excol agri: et huiusmodi res restituendae sunt homini cum suis proventibus: quia in hoc homo cui facta est inju ad rei substantiam, sed etiam quantum ad rei usum et fructum ex usu proveniente: et sic possunt et de advertendum, quod illi semper facienda est restitutio qui passus est injuriam et damnum. Si ergo aliquis de jure restitutio realis, sed tantummodo secundum genus injuriae facienda est emendatio per similem s eum damnificando, non tenetur ad aliquam restitutionem realem: quia omnis restitutio realis facienda ab illati. Hinc est quod lex Moysis generaliter omnem furem cujuscumque rei, quae usum habet et utilitatem propter rei substantiam, et aliud propter rei ablatam usum. Ex quo concluditur quod in omni restitutione quam usus qui ex re provenit ex natura rei. Si ergo aliquod lucrum provenit usurario ultra rem et rei usu quo non est alius damnificatus, dico sine praejudicio, quod non tenetur restituere homini huiusmodi lucr argenti habuit ex usuris ex quibus formavit imaginem quam vendidit centum et decem marchis: credo si supercrescentes non tenetur restituere ei a quo praedictas centum marchas habuit: tamen non potest ea aliena sibi acquisivit. Et ideo sola auctoritas Ecclesiae ad restituendum vel distribuendum talia requirend quamcumque rem furtivam statim vendat post furtum, aut convertat in usum proprium, ipsam totam cor velit restituere, utrum teneatur ad omnes fructus usuum quos percepisset verus dominus in tempore illi equinum, aut vitulum, quem verus dominus usque ad annos perfecti valoris custoditurus erat, sed fur sta fur teneatur restituere pulli valorem tantum, vel etiam equi perfecti valorem. Quod videtur secundum ju secundum legem, ergo multo magis damna illata. Juxta hoc etiam quaeritur de pecunia ablata, aut etiam i quo est ablata sive injuste accepta, mercando ex ea auxisset eam, aut fortasse propter ejus defectum ven accepit. Utrum detinens et accipiens huiusmodi pecuniam sine justo titulo, teneatur ad omnia lucra quae quae exinde accidunt vero domino ad plenam restitutionem. Ad haec duo dicimus sine praejudicio, quod principaliter considerata sunt: scilicet valor rei quae principaliter ablata est vel accepta injuste, et dam dico quod eadem res quae ablata fuerat restituenda est, aut aequivalens et similis in specie et valore. Sed

dicitur damnum illatum proprie et per se, et aliquando per accidens tantum et non per se: et si primo modo cujuscumque sit; secundo modo non tenetur ipsi passo damnum. Et ad intelligendum praedicta, ponamus pecunia sibi ablata in hoc quod ex ea volebat emere necessaria sibi ad vitam, sive solvere emptam, sive debere propter ejus defectum oportuit eum vendere possessiones suas sibi utiles, aut accipere pecuniam mutuam, quod hujusmodi damnum per se incidit ex furto vel rapina, et ideo restituendum est ipsi qui passus est. Perinde quando scilicet ex pecunia ablata lucrum quod intendebat non acquisivit, et nihil aliud passus est damnum restituendum ei qui passus esse dicitur hujusmodi damnum. Si vero sint res quae sunt ablatae, quae ex se augeri et crescere in pretio, tunc tenetur spoliator restituere pretium ipsarum rerum, quod valiturae erant secundo restituere eos. Et per hoc patet responsio ad praedictas quaestiones. Et istud etiam in usuris est semper auctoritas in usuris.

Quoniam autem restitutiones usurarum, et a quibus et quibus et ex quibus et quomodo faciendae sunt, sunt cogendi sunt a legibus et a canone declarare volumus. Et primo supponendum est, quod culpa secundum legem nec expiatur, sed solum poenitentia voluntaria, et valet emendari: sed culpa quae contra caritatem proximi humanis coercenda est. Quia ergo vitium usurae directe est contra caritatem Dei, qui ipsam in lege sua prohibet proximi; quibus poenis sit coercendum, videamus. Ad quod intelligendum sciendum est, quod generaliter poena et ideo usurarii publici poena juris coercendi sunt: et aliquando propter contumaciam comitantem, est etiam poena coercetur: scilicet quod prohibentur ad sanctam communionem recipi, et ne similiter recipiantur eorum corpora sepultura; et haec tria habentur Extra. cap.: quare in omnibus fere. Et insuper additur poena his qui contra episcopos sui prius satisfecerunt, et insuper etiam per accidens consequitur tales nota infamiae. Unde et ubi quas dederant, repetunt, repelli possunt per exceptionem, donec prius ipsi de usuris satisfecerint, Extra. de poenis. his poenis possunt clerici jure ab officiis suspendi, si fuerint usurarii, Extra. eodem cap. plerique clericos corriguntur, debet et potest iudex per suspensionis et depositionis sententiam coercere: laicos vero per canonem Extra. eodem cap. praedicta. Item si non sufficit justitia ecclesiastica, debet justitia laicalis in auxilium adhiberi nec licuit. In foro autem poenitentiali, ubi de correctione peccati agitur, maxime in quantum est contra legem ut beneficium absolutionis eis denegetur, nisi restitutionem faciant plenam quantum potuerint, aut dilati pauperes et impotentes sunt ad restitutionem faciendam, promittant Deo et confessori suo, quod si aliquando pro sua facultate. Aut certe remissionem postulabunt ab his, quibus restituere tenentur: alias non debentur beati Augustini auctoritate, qua dicitur quod non remittitur peccatum, nisi restituatur ablatum. Sicut ergo verbo, ita non debet absolvere verbo nisi cum videt signa restitutionis fiendae in confitente: quae signa debent esse diversos status restituentis. Haec sunt dicta circa usurarum vitium quantum ad ipsas usuras in communem quantum Deus meae parvitati dignatus est donare. Quod si quid male, vel minus bene dictum est, veniam precor sum infirmus, minor ad intellectum justiciarii, et legum et ignorantiae tenebris circumdatus et involutus semper imploro, ut illuminando cor meum, tenebras peccatorum et errorum in me purget, et ad perfectionem regnat cum patre lumen, aeterno connexus et consubstantiali sancti spiritus amore, Deus unus in saecula amen.

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Digest of Justinian – Useful Quotes

Posted on [July 6, 2024](#)

Gaius (on the provincial Edict 7) But, in the case of money, a proper undertaking must be given to those at whose charge a usufruct in such money is bequeathed. 1. This senatorial decree did not operate so as to make it possible that there should be a usufruct in money,

strictly speaking ; as the authority of the Senate cannot subvert common sense ; still, the above relief being given, the consequence was that there came to be something analogous to a usufruct.

DIGEST 8.5.2

– [HTTPS://ARCHIVE.ORG/DETAILS/DIGESTOFJUSTINIA02CHAR/PAGE/44/MODE/1UP?Q=CONSUMED&VIEW=THEATER](https://archive.org/details/digestofjustinia02char/page/44/mode/1up?q=consumed&view=theater)

There can be no loan of an object which is consumed in the use, unless the borrower took it for purposes of ostentation or display.

DIGEST 13.6.3.6

The term “money” not only includes coin, but all kinds of property, that is to say, everything which is corporeal; for there is no one who has any doubt that corporeal property is also included in the word “money.”

DIGEST 50.16.178

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Aquinas, Just Price and Opportunity Cost

Posted on [August 8, 2024](#)

There are a few interesting part of Aquinas to try to square. I’m not sure why it hasn’t been pointed out before, but let’s take a look.

As I noted in the previous post, Aquinas argues that the buyer buys justly when he pays for what the thing is worth and not how much the seller suffers from its loss. However, in the Summa, Aquinas also argues that the seller can sell a good for more than it is worth in itself based on how much he suffers from its loss. These are different perspectives on the same sale. The buyer can buy justly by buying at its worth while the seller can sell justly by charging for more than its worth based on how much he suffers from its loss.

In the De Malo, Aquinas relates this to the case of a borrower. The borrower would be the buyer in such a case who is not required to compensate the lender for what he suffers from the loss of the thing. But there a question of why the lender could not sell the thing at more than its worth if he suffers from its loss. The lender still must receive back only what he gave in the exchange and not more.

A few thoughts come to mind. In the case of the lender, as analogous to the seller, he obligates the borrower, i.e. the buyer, to pay more back in return. Whereas in the case of the buyer-seller relationship, it is a consensual contract and the buyer is not obligated to pay more though he can pay the price as it is presented. However, this is not entirely satisfactory.

One of the central differences is that sales were established for the common advantage. Because of the loss the seller would suffer, he is put at a disadvantage. In this sense, the allowance of charging more than the thing itself is worth allows for the exchange to be for the common advantage. In contrast, the mutuum is established for the advantage of the borrower. The lender demanding more would be to the disadvantage of the borrower, because he must return more than he receives.

Another way to approach the question is understanding how the equality is measured. In the case of an exchange of diverse goods, the measure is value or human need. In this sense, it makes sense for the seller to charge more, because he values it more and thus it is worth more to him. However, in the case of the same kind of goods, the measure of equality is fungibility or functional interchangeability. One dollar is exchanged for four quarters because they are the same sort of thing, irrespective if quarters are more valuable because one is in a laundromat or arcade. Thus, the worth to the lender is not accounted for in treating the equality in the loan.

This makes sense with what Aquinas says in saying that we should not sell what we do not yet possess. In the *mutuum*, he conceives the principal to have already been satisfied by receiving the same amount in kind and then questions whether the profit is something that can be sold over and above that. This differs from the sale which considers the price of the thing sold and the value that goes into it. Hence, it seems that there is a sense in which opportunity cost comes into the valuation of a just price, but not into a loan and this is due not to the distinction of justification and valuation of a price, but to a difference in the nature of the relevant measures.

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Aquinas on Damnum Emergens

Posted on [August 8, 2024](#)

There are two places that Aquinas discusses what would later be called *damnum emergens*: *Summa Theologiae* II-II, q. 78, a. 2, ad. 1 and *De Malo* q. 13, a. 4, ad. 14. There is some controversy on how to interpret these passages, because it appears in the *De Malo* that Aquinas only speaks of the ability to recover a loss from delay whereas the passage in the *Summa* appears to be more permissive. However, reading these passages and opposition is a mistake, because once we look at the objections themselves, we find that there is a clearer path forward.

In the *Summa*, the objection proceeds as follows:

Ad secundum sic proceditur. Videtur quod aliquis possit pro pecunia mutuata aliquam aliam commoditatem expetere. Unusquisque enim licite potest suae indemnitati consulere. Sed quandoque damnum aliquis patitur ex hoc quod pecuniam mutuatur. Ergo licitum est ei, supra pecuniam mutuata, aliquid aliud pro damno expetere, vel etiam exigere.

Objection 1: It would seem that one may ask for some other kind of consideration [benefit] for money lent. For everyone may lawfully seek to indemnify himself. Now sometimes a man suffers loss through lending money. Therefore he may lawfully ask for or even exact something else besides the money lent.

And Aquinas' response is:

Ad primum ergo dicendum quod ille qui mutuum dat potest absque peccato in pactum deducere cum eo qui mutuum accipit recompensationem damni per quod subtrahitur sibi

aliquid quod debet habere, hoc enim non est vendere usum pecuniae, sed damnum vitare. Et potest esse quod accipiens mutuum maius damnum evitet quam dans incurret, unde accipiens mutuum cum sua utilitate damnum alterius recompensat. Recompensationem vero damni quod consideratur in hoc quod de pecunia non lucratur, non potest in pactum deducere, quia non debet vendere id quod nondum habet et potest impediri multipliciter ab habendo.

Reply Obj. 1: A lender may without sin enter an agreement with the borrower for compensation for the loss he incurs of something he ought to have, for this is not to sell the use of money but to avoid a loss. It may also happen that the borrower avoids a greater loss than the lender incurs, wherefore the borrower may repay the lender with what he has gained. But the lender cannot enter an agreement for compensation, through the fact that he makes no profit out of his money: because he must not sell that which he has not yet and may be prevented in many ways from having.

It seems from the above that Aquinas is discussing an agreement before the mutuum is contract. This separate contract or pact that Aquinas identifies is something before the contract. The lender suffers loss in that he lends. Here it seems that the objector is referring to a loss from the act of lending in the present.

Moreover, one of the things that Aquinas makes clear is that he may incur a loss of "something that he ought to have" (*aliquid quod debet habere*). This is again something in the present. So, he incurs a loss of something he ought to have now through the act of lending now. This is plausibly the sort of expenses that may come along with the very act of lending, such as the cost of acquiring the money, writing up the contract and so forth.

The objection from the De Malo is somewhat different, but in important ways.

Praeterea, duplex est interesse. Quoddam quidem ex eo quod aliquid non adest, quia scilicet aliquis non acquisivit quod acquirere potuisset, et ad hoc interesse non obligatur aliquis. Aliud est interesse ex eo quod aliquid abest, quia scilicet aliquid subtractum est alicui de hoc quod habebat; et de tali interesse nascitur obligatio. Sed contingit quandoque quod ex pecunia mutuata aliquis damnificatur in eo quod habebat. Ergo videtur quod possit pro hoc interesse aliquid accipere absque peccato.

Moreover, there is a twofold interest. One arises from the fact that something is not present because someone has not acquired what they could have acquired, and for this interest, no one is obligated. The other interest arises from the fact that something is missing because something has been taken away from someone from what they had; and from such an interest, an obligation arises. But it sometimes happens that someone is harmed in what they had from borrowed money. Therefore, it seems that one can receive something for this interest without sin. (Copilot Translations)

And Aquinas' response

Ad decimumquartum dicendum, quod ex pecunia mutuata potest ille qui mutuatur, incurrere damnum rei iam habitae dupliciter. Uno modo, ex quo non redditur sibi pecunia statuto termino; et in tali casu ille qui mutuum accepit, tenetur ad interesse. Alio modo infra tempus deputatum; et tunc non tenetur ad interesse ille qui mutuum accepit. Debebat enim ille qui pecuniam mutuavit, sibi cavisse ne detrimentum incurreret. Nec ille qui mutuo accepit, debet damnum incurrere de stultitia mutuantis. Est etiam simile in emptione. Qui enim emit rem aliquam, tantum pro ea iuste dat quantum valet; non autem quantum ille qui vendit, ex eius carentia damnificatur.

To the fourteenth point, it must be said that from borrowed money, the lender can incur a loss of already possessed property in two ways. One way is when the money is not returned at the agreed-upon time; in such a case, the borrower is obligated to pay interest. The other way is within the designated time; in this case, the borrower is not obligated to pay interest. The lender should have taken precautions to avoid incurring a loss. The borrower should not suffer a loss due to the lender's imprudence. The same applies to buying. For whoever buys something, pays just as much for it as it is worth; not as much as the seller is harmed by its absence. (Copilot Translation)

In the objection, the objector is pointing to something being wanting (*abest*) or missing of what they had (*quod habeat*). Here we are dealing in the past tense. This is something that has already been lent and now in the midst of the loan the lender suffers some loss. The objector already rejects *lucrum cessans* or a claim to profits he could have acquired, but he claims that the lender could suffer a loss from not having what he lent. While there are some similarities with the question from the Summa, this is proposing a distinct situation and objection. Since we are dealing with the question of loss after the contracting of the loan, Aquinas will admit that a loss may be suffered due to delay. Here we can find congruence with the Summa passage, because the loss from delay is a loss of something he ought to have, namely the principal he can contract to be returned. The “ought to have” here is the title to the property he is due and this may be clarifying for understanding the Summa passage.

Aquinas goes on to deny that the borrower should be held liable for damages that the lender suffers from the lack of his money. This seems clearly unjust, because the borrower is not only obligated for the return of what he received, but also for whatever befalls the lender. Typically in insurance, the insurer is paid for this service where the borrower is expected to provide it gratuitously.

The Ecclesiastical Treatment of Usury – 1894

Posted on [September 17, 2024](#)

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Ernest Van Roey – De Justo Auctario ex Contractu Crediti – On *Lucrum Cessans*

Posted on [September 13, 2024](#)

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ARTICULUS III. DE AUCTIONARIII TITULIS CREDITO ACCIDENTIBUS. Superioribus paginis quaestionem de ipso crediti contractu, in se considerato, plene absolutam censemus. Cum autem ex' crediti contractu, pro adjunctis extrinsecis, iusti quidam auctionarii tituli oriri possint, oportet ut etiam de hisce nunc agamus. Sed' cum mens nostra, hanc elucubrationem incipiendo, non fuerit completum de hac materia tractatum conscribere, verum illa principia indagari et confirmare quae essentialia videantur et ad statum quaestionis hodiernum solvendum concurrentia, ideo de illis tantum titulis inquiremus quorum notio hodiernis aliqua* tenus obscurata sit vel de quibus controversia adhuc vigeat.

Titulus temporis jam exclusus est : cum autem principia exposita applicentur temporis spatio sive breviori sive longiori, dummodo non alii iusti tituli longiori tempore subsint — qui sane vix de facto non suberunt — nullum fundamentum perspicitur ad distinguendum inter tempus et tempus. Tituli damni emergentis^ periculi sortis, ac posnae conventionalis pluribus adhuc saeculis extra quaestionem positi sunt. Unde tantum remanet agendum de titulo lacri cessantis, et de titulo, olim ignoto, legis civilis,

§ I. De lucro cessante. Nollionem et principia huiusmodi tituli ul jam scientiae acquisita praesupponunt hodierni. Unde non jam curare solent de eodem rite intelligendo ac exponendo. Ideo duplex nobis ratio est hic principia iterum inquirendi : prior, ne in applicatione iste titulus nimis restringatur, et altera, ne ut fundamentum assumatur theoriae cuiusdam nimis absolutae ac extensae.

ARTICLE III. ON THE TITLES OF INCREASES ACCRUING TO CREDIT. In the previous pages, we consider the question of the credit contract itself, in its entirety, to be fully resolved. However, since certain titles of increase may arise from the credit contract due to external adjuncts, we must now address these as well. But since our intention, when beginning this work, was not to write a complete treatise on this subject, but rather to investigate and confirm those principles that seem essential and relevant to solving the current state of the question, we will therefore only inquire into those titles whose notion is somewhat obscured today or about which controversy still exists.

The title of time has already been excluded: however, since the principles expounded apply to both shorter and longer periods of time, provided that no other just titles are subject to the longer period—which indeed will hardly be the case—there is no basis for distinguishing between time and time. The titles of emerging damage, risk of chance, and conventional penalty have been excluded for several centuries. Therefore, it remains only to deal with the title of lost profit, and with the title, once unknown, of civil law.

§ I. On Lost Profit. The notion and principles of this title are already presupposed by modern science. Therefore, they no longer care to understand and explain it properly. Hence, we have a double reason to inquire into the principles again: first, so that this title is not too restricted in application, and second, so that it is not assumed as

	the basis of a theory that is too absolute and extensive.
A. De ^nuina notione lucri cessantis. Inquirentcs de notione et genuinis principiis lucri cessantis (i)^ ita intime ad oeconomica facta et praxim attingimus ut vix possibile videalur, hisce absltraclis, doctrinam recte intelligere. Ciim hac in re plerumque ponatur lucri jusli in mutuo fundamentum simul ac origo abusuum, non mirum auctores hicsempet circumspecto modo progressos esse. Et quidem iis qui evolutioni doctrinarum oeconomicarum student ab exordio Medii aevi ad nostra usque tempora, maxima difficultas facessit theoria de lucro cpssante. Cujus tituli evolutio si accurate manifestaretur, multa sane primo intuilu inexplicabilia explicarentur. Et speciatim pleraque explicarentur, si ostenderetur quomodo et quandonam titulus hic transierit a requisita probatiane positiva, ut auctarium gignere possit, ad praesumptionem ejusdem universalem, ita ut quasi generatim auctarium gignat nisi contrarium probetur. At non oportet ut transitus talis evolutionem doctrinae importet, sed tanium progressum vitae ipsius oeconomicae. Et ita, praesertim inde a saeculo XVI ineunte, multum pendebat a modo quo facta interpretarentur auctores, quod alii assererent requiri ut lucrum cessans in singulo casu sit probabile, alii potius sufflTicere ut lex vei aestimatio communis adsit auctarium permittens et lucri cessantis fundans praesumptionem. Insuper, multum refert inspicere utrum scriptores in praxi severitati ac rigorismo faverent, necne : et ideo, cognita generali scientiae moralis indole per saeculum XVIII, non mirum omnes fere auctores tunc arctius, ut videtur, titulum lucri cessantis interpretatos esse (i). Quod quidem, ut notatuni est supra, maxime in controversia de usura est lugendum : quamvis enim plerique tunc theologi, traditioni consentientes, genuina rationis principia propugnarent, tamen eadem practice nullo generoso animo nec vere scientifico applicabant, unice quasi intenti ut probarent peccatum usurae, yifa oeconomica quamvis mutata, nuilatenus esse abolendum. Ideo praecise oppositio inter utrasque litigantium partes maxime acuta est, et ideo ultimatim nova «chola oeconomica, severiora principia simul ac severius practicum judicium illis ipsis relinquens, alia	A. On the Genuine Notion of Lost Profit. Inquiring into the notion and genuine principles of lost profit, we touch so intimately on economic facts and practice that it hardly seems possible to understand the doctrine correctly without these abstractions. Since in this matter it is generally posited that the right to just profit in a loan is both the foundation and the origin of abuses, it is not surprising that authors have always proceeded cautiously here. Indeed, for those who study the evolution of economic doctrines from the beginning of the Middle Ages to our times, the greatest difficulty is the theory of lost profit. If the evolution of this title were accurately manifested, many things that seem inexplicable at first glance would indeed be explained. And especially many things would be explained if it were shown how and when this title transitioned from requiring positive proof to generate an increase, to a universal presumption of the same, so that it generally generates an increase unless the contrary is proven. However, such a transition should not imply an evolution of doctrine, but only a progression of economic life itself. And so, especially since the beginning of the 16th century, much depended on how authors interpreted facts, with some asserting that it was required for lost profit to be probable in each case, while others rather sufficed that a law or common estimation existed allowing and founding the presumption of lost profit. Moreover, it is important to see whether writers favored severity and rigor in practice or not: and therefore, knowing the general nature of moral science through the

principia ut inconcussa admisit, ex quibus plenissima in hac quaestione opinionum

- confusio pullulavit. Unde prae oculis nobis erunt principia de lucro cessante quae auctores saeculo praesertim XVII viventes, Teri scienliae moralis principes, statuerunt ac firmaverunt (i).

18th century, it is not surprising that almost all authors then interpreted the title of lost profit more strictly, as it seems. This is particularly lamentable in the controversy over usury: although most theologians at that time, agreeing with tradition, defended the genuine principles of reason, they practically applied them with no generous spirit nor truly scientific approach, solely intent on proving the sin of usury, despite the changed economic life, was by no means to be abolished. Therefore, the opposition between the two litigating parties is most acute, and ultimately the new economic school, leaving the stricter principles and practical judgment to those very same, admitted other principles as unshaken, from which the fullest confusion of opinions in this question has sprung. Hence, we will have before our eyes the principles of lost profit that authors living especially in the 17th century, true princes of moral science, established and confirmed.

c Lucrum cessare dicitur, quando ex eo quod mutuas, amittis occasionem lucrando tua pecunia, qua volebas vel censum vel domum vel agniti fructum emere, vel [praesertim nuoc] negotiatione licite tibi lucrum quaerere > (t). Inquirendum autem est quando nam lucrum illud cessans sit juste eompensabile ac compensandum : et ideo multum refert ut determinetur i^o de quanam ratione lucrum cessans sit de quanam possibilitate ex pecunia lucrando scilicet, et 3^o quonam modo lucrum ob mutuum cessare debeat. Imprimis liquet pactum positivum de lucro cessante requiri, quando lucrum non quasi communiter ob creditum cessat : tunc enim debitor praesumitur omnia retribuire, sortem retribuendo, ideoque speciali ac explicito modo de lucro paciscendum est, eo vel magis quod mutuatarius, si scivisset tale pactum addi implicite merito forsitan onus debiti suscipere non iuisset. Verum ab alia parte, status societatis oeconomicus talis concipi potest^a ut qui habet voluntatem ex pecunia extra

Lost profit is said to occur when, from the fact that you lend, you lose the opportunity to profit from your money, which you wanted to use either to buy a house or a fruitful field, or [especially now] to seek profit through legitimate negotiation. However, it must be inquired when that lost profit is justly compensable and to be compensated: and therefore, it is very important to determine 1) from what will, 2) from what possibility of profiting from the money, and 3) in what way the profit should cease due to the loan. First of all, it is clear that a positive agreement on lost profit is required when the profit does not cease as a common consequence of the credit: then indeed the debtor is presumed

mutuum lucrandi,. etiam veram lucrandi spem possideat; et cum nqiversi lucrum velle praesumanlur, dummodo spes adsit, in statu tali oeconomico lucrum cessans jam pro omnibus praesumitur : ideoque etiam pactum de eodem praesumitur, ac aestimatione communi tam creditorum quam debitorum implicitum habetur. Et tunc quamvis non jam oporteat ut positive in antecessum de lucro probabili cessante agatur, attamen oportet ut titulus ille, moda debito intellectus, revera objective adsit : etenim, si non adesset,. pactum implicitum esset circa aliquid inexistens^ id est compensandum esset quod revera non esset compensabile.

to repay everything by repaying the principal, and therefore it must be specifically and explicitly agreed upon about the profit, all the more so because the lender, if he had known such an agreement was implicitly added, might perhaps have refused to take on the burden of the debt. But on the other hand, the economic state of society can be conceived in such a way that those who have the will to profit from money outside the loan also have a true hope of profiting; and since everyone is presumed to want profit, provided there is hope, in such an economic state lost profit is already presumed for all: therefore, the agreement on the same is also presumed, and it is implicitly held by the common estimation of both creditors and debtors. And then, although it is no longer necessary to positively deal with probable lost profit in advance, it is still necessary that this title, properly understood, is indeed objectively present: for if it were not present, the implicit agreement would be about something non-existent, that is, it would be compensating for something that is not truly compensable.

Quandonam igitur adest iucrum cessans de quo justum pactum sive expiicitum sive implicitum habeatur ? Communiter ab auctoribus aevi aurei tres conditiones ponuntur praecipuae (2) : < prima est quod mutuiim vera sit causa lucri cessantis, hoc est, ideo tibi lucrum cesset quia mutuo das, alias non cessaturum;... secunda conditio communiter et merito requisita, est ut non «xigatur ultra sortem, nisi quantum lucrum illud cessans valere potest;... tertia conditio principaliter requisita ad justitiam de lucro cessante est, ut id quod pro lucro solvitur, non solvatur statim a mutuataro, sed postea. »

When, therefore, does lost profit exist for which a just agreement, either explicit or implicit, can be made? Generally, authors of the golden age set forth three main conditions: The first is that the loan is the true cause of the lost profit, that is, you lose profit because you lend, otherwise it would not be lost. The second condition, commonly and rightly required, is that nothing beyond the principal is demanded, except as much as the lost profit can be valued. The third condition principally required for the justice of lost profit is that what is paid for

	the profit is not paid immediately by the borrower, but later.
i* De voluntate requisita. Quae conditiones si adsunt, nihil refert « sive sponte mutues, sive involuntarie per vim, fraudem vel praeceptura superioris impulsus;... si enim qui per injuriam cogitur mutuare, de lucro cessante pacisci potest, etiam poterit qui non cogitur : nam injuria non facit ut centum quae alteri mutuas sint aequalia centum et decem quae ab illo exigis; sed lucrura speratum per 100 id facit; alioquin si ratione injuriae esset illa aequalitas, darentur 10 illa, pro injuria illa, non pro lucro cessante; et ita lucrum cessans esset impertinens. Item non possent mercatores exigere pro lucro cessante, quando coguntur a Principe vel Republica ad mutuandura; quia nulla fit illis injuria » (i). Atqui pluribus abhinc saeculis, communiter adraittitur mercatores divites, cum a rege vel republica necessitate, puta bello, pressis ad mutuandum cogantur, jus de lucro cessante pacisci (2).	On the required will. If these conditions are present, it does not matter whether you lend voluntarily or involuntarily through force, fraud, or the command of a superior. For if one who is compelled by injury to lend can make an agreement about lost profit, so can one who is not compelled. For injury does not make a hundred lent to another equal to a hundred and ten demanded from him; but the expected profit from the hundred does. Otherwise, if equality were due to injury, the ten would be given for the injury inflicted, not for the lost profit, and thus the lost profit would be irrelevant. Likewise, merchants could not demand compensation for lost profit when compelled by the Prince or Republic to lend, because no injury is done to them. However, for several centuries, it has been commonly admitted that wealthy merchants, when compelled by the king or republic in times of necessity, such as war, can justly make an agreement about lost profit.
Itaque ad voluntatem lucrandi nullatenus requiritur ut mutans a lucrando per negotiationem aliamve viam modo fortuito sive injusto sive justo prohibeatur ac impediatur. Ita nec requiritur ut a lucrando cessare velit tantum ad alterius preces : etenim cum dicitur alicui cessare lucrum... quando ipse se privat, sive id faciat sponte, sive ad preces alterius : hoc enim est pretio aestimabile; sicut si quis me roget, ut non laborem, vel ut instrumenta artis meae ipsi committam, possum pacisci de lucro cessante : non enim teneor me privare meo emolumento gratis » (i). Unde non refert utrum creditor ad mutuandum rogetur, an sponte se offerat : et ratio in hac re fundamentalis est, cum quia aequalitas contractus nullo modo pendet ex eo quod te offeras vel non offeras, sed solemus ex eo	Therefore, the will to profit is not required to be absolute in the sense that the lender is positively or justly prohibited or hindered from profiting through negotiation or any other way. Nor is it required that the lender wants to cease profiting only at the request of another. For it is said that someone loses profit when he deprives himself, whether he does so voluntarily or at the request of another. This is indeed estimable at a price; just as if someone asks me not to work, or to lend him my tools, I can make an agreement about lost profit. For I am not obliged to deprive myself of

quod lucrum revera tibi cesset ex mutuo » (2). Quodsi eadem ratio prae oculis habeatur, quid ad justitiam contractus importat, quod quis malit mutuare cum pacto sive explicito sive praesumpto lucri cessantis, quam negotiationem lucrativam exercere? Cum enim contractus objectivam aequalitatem includere supponatur, animi intentiones ac affectus ad justitiam non spectant. Olim sane quaerere solebant utrum ex intentione lucri mutuum usura inficeretur, ad quod quaerendum periculo abutuntur. Verum auctores praecipui, saeculis XVI et XVII viventes (i), merito affirmant lucrum revera cessans juste compensari, etiamsi quis mutuum lucrativum prae negotiatione quavis frugifera eligat. Per se autem patet, juxta secundam conditionem supra positam, injuste majus ius in mutuo exigi quam spes lucri in negotiatione aestimaretur. < Si vero praelectio illa non sit quia plus valeat lucrum quod a mutuuario datur, quam quod ex negotiatione sperabat, sed quia modus ille lucrandi sit magis juxta genium et indolem suam, et vitat aliquam molestiam quam tamen non redimeret pretio, sed vellet potius cum illa molestia plus lucrari quam minus sine illa : tunc, ita de Lugo (2), veram esse puto secundam sententiam (affirmantem). Sic enim artifex, qui nollet pretio aliquo emere otium a labore, sed totum suum hicrum integrum cum labore fortius vellet quam minus sine labore : potest totum lucrum laboris exigere ab eo a quo invitatur ad recreationem, licet revera malit totum illud lucrum sine labore et cum recreatione habere, quam cum labore. » Quae transcribenda duximus, cum profundam et veram rei intellectionem contineant.

my benefit for free. Hence, it does not matter whether the creditor is asked to lend or offers himself voluntarily. The fundamental reason in this matter is that the equality of the contract in no way depends on whether you offer yourself or not, but solely on whether you truly lose profit from the loan. If the same reason is kept in mind, what does it matter to the justice of the contract whether someone prefers to lend with an explicit or presumed agreement about lost profit, rather than engage in profitable negotiation? For since the contract is supposed to include objective equality, the intentions and affections of the mind do not pertain to justice. Formerly, they used to inquire whether a loan was tainted with usury due to the intention of profit, which was sought to be determined by the danger of abuses. However, the principal authors living in the 16th and 17th centuries rightly affirm that truly lost profit is justly compensated, even if someone chooses a profitable loan over any fruitful negotiation. It is evident by itself, according to the second condition stated above, that it is unjust to demand more profit in a loan than the hope of profit in negotiation would be estimated. If, however, the preference is not because the profit given by the borrower is worth more than what was hoped for from negotiation, but because that way of profiting is more in line with one's own nature and avoids some inconvenience which, however, would not be redeemed at a price, but would rather prefer to earn more with that inconvenience than less without it: then, as Lugo rightly thinks, the second opinion is true. For example, an artisan who would not want to buy leisure from labor at any price,

Unde ad titulum lucri cessantis voluntas ex pecunia aliave re credita lucrandi nullatenus requiritur absoluta hoc sensu, quod pecunia vel res jara operationi lucrativae sit revera tradita, vel saltem positive et absolute destinata, nunc autem ob vim ac fraudem alterius, praeceptum superioris, vel saltem preces ali<;ujus, mutuo credatur; sufficit enim voluntas conditionata, quae huc redit : volo, nunc saltem cum pecuniam trado, ex pecunia mea lucrari; possem autem, si vellem, ex eadem lucrari contractibus multis frugiferis; verum contractibus illis insunt incommoda, puta labores, lucri inceititudines, damni pericula, quae tamen, quamvis pertimescenda, subire vellem «i ad justum lucrum percipiendum subeunda essent; simul vero cum illa facultate occurrit mihi occasio pecuniae mutuandae. Cum duplex illa possibilitas mihi sit obvia, simpliciter praefero pecuniam cnm titulo lucri cessantis mutuo t)fferre. Juste de lucro tunc stipulatio fit, cum lucrum revera et objective cessare supponatur. Quid aulem refert quod cesset quia ita statuerim, cum cesset revera? et quamvis malim lucrificare aliunde, si non possem mutuare, tamen praefero simpliciter mutuo lucrificare, cum possim mutuare.

but would rather have his entire profit with labor than less without labor, can demand his entire profit from the one who invites him to recreation, even if he would rather have that entire profit without labor and with recreation than with labor. These points are worth transcribing as they contain a profound and true understanding of the matter.

Therefore, for the title of lost profit, the will to profit from the money or other thing lent is not required to be absolute in the sense that the money or thing is truly handed over to a profitable operation, or at least positively and absolutely destined, but now due to the force and fraud of another, the command of a superior, or at least the request of someone, it is lent. It suffices that the will is conditional, which comes down to this: I want, at least now when I hand over the money, to profit from my money; I could, if I wanted, profit from the same through many fruitful contracts; but those contracts involve inconveniences, such as labor, uncertainties of profit, dangers of loss, which, although to be feared, I would be willing to undergo if they had to be undergone to receive just profit; at the same time, the opportunity to lend the money occurs to me. With this double possibility before me, I simply prefer to offer the money with the title of lost profit. The stipulation about profit is justly made when the profit is truly and objectively supposed to cease. What does it matter that it ceases because I have decided so, as long as it truly ceases? And although I would prefer to profit otherwise, if I could not lend, I simply prefer to profit from the loan, since I can lend.

Quae voluntas ita conditionata si sufficit ad titulum lucri cessantis, at nullatenus sufficit voluntas absoluta pecuniam otiosam conservandi, seu in arca ponendi, nisi mutuo lucrificari possit. Et in superioribus probavimus, nequidem nudam obligationem pecunia carendi huic voluntati absolutae additam per mutuum revera initum, juste compensandam esse : cum enim possessor ad pecuniam infoecundam servandam positive determinatus sit, ne possibile quidam est ut lucrum cesset. Quae voluntas, ut patet, a praecedenti prorsus differt : hic, nisi pecunia mutuo credita fuisset, absoluta intentione in arca manebat reposita; illic, nisi mutuata fuisset, absoluta intentione alii contractui frugifero subiacebat. Quae differentia adhuc magis elucescit, si respicitur ad difficultatem quam S. Alphonsus (i) contra priorem voluntatem ponit : c Sed dices : iste usuram committit, quia efficaciter vult lucrari ex mutuo, et inefficaciter ex negotiatione. At responderi potest : iste quamvis habeat voluntatem inefficacem negotiandi, vult tamen efficaciter juste lucrari, et quia jam potest juste lucrari ex negotiatione, ideo juste lucratur ex mutuo, cum mutuum sit huic vera et efficax causa, ut lucrum ex negotiatione ipsi cesset. » Quod verum est de voluntate conditionata superiori, at non de voluntate altera : qua praecise supponatur possessor non velle efficaciter juste lucrari, sed potius velle inefficaciter vel non lucrari, vel mutuo lucrari. Et ita rursus patet cum tali voluntate eum ex mutuo lucrari non posse, nisi falso admittatur ex mutuo qua tali ut ex locatione lucrari posse.

If such a conditional will suffices for the title of lost profit, an absolute will to keep the money idle, or to put it in a chest, unless it can be profitably lent, does not suffice at all. And we have proven above that even the mere obligation of being without money added to this absolute will through a loan truly undertaken is not justly compensable. For when the possessor is positively determined to keep the money unproductive, it is not even possible for profit to cease. This will, as is evident, differs entirely from the preceding one: here, unless the money had been lent, it would have remained in the chest with absolute intention; there, unless it had been lent, it would have been subjected to another fruitful contract with absolute intention. This difference becomes even clearer if we consider the difficulty that St. Alphonsus poses against the former will: But you will say: this person commits usury because he effectively wants to profit from the loan and ineffectively from negotiation. But it can be answered: although this person has an ineffective will to negotiate, he still effectively wants to profit justly, and because he can now justly profit from negotiation, he therefore justly profits from the loan, since the loan is the true and effective cause for him to cease profiting from negotiation. This is true of the conditional will mentioned above, but not of the other will: which precisely supposes that the possessor does not effectively want to profit justly, but rather effectively wants either not to profit or to profit from the loan. And thus it is again evident that with such a will he cannot profit from the loan, unless it is falsely admitted that he can profit from the loan as such as from a lease.

Sed ulterius progrediendum est ac quaerendum utrum, data lucri in negotiatione probabilitate, ad pactum de lucro cessante sufficiat necne voluntas minus fixa : nempe si non efficaciter velis juste lucrari, sed tantum deliberare de pecunia ad negotiatiouem applicanda, an posses aliquid in pactum deducere. Quod quaesitum hic praesertim ponatur ad principia intelligenda. Olim agendum erat de propinqua possibilitate seu de probabili occasione pecuniam negotiationi applicandi, et non tantum, ut nunc, de probabilitate ex negotiatione, in qua pecunia moraliter certo poni potest, lucrificandi. Atqui, probabilitatem talem objectivam inveniendi opportunitatem lucri pro rata probabilitatis compensabilem esse asserebant merito auctores (i); et eodem modo facultatem subjectivam de hac applicatione deliberandi quodam pretio esse aestimabilem. Quae sane prorsus admittenda videntur.

But we must go further and inquire whether, given the probability of profit in negotiation, a less fixed will suffices for an agreement about lost profit: namely, if you do not effectively want to profit justly, but only deliberate about applying the money to negotiation, can you bring something into the agreement? This question is posed here especially to understand the principles.

Formerly, it was necessary to deal with the proximate possibility or probable opportunity of applying the money to negotiation, and not only, as now, with the probability of profiting from negotiation in which the money can be morally certainly placed. However, authors rightly asserted that the objective probability of finding a profit opportunity is compensable according to the rate of probability; and in the same way, the subjective ability to deliberate about this application is estimable at a certain price. These points indeed seem entirely admissible.

IInde tandem, quod attinet ad lucrandi voluntatem necessariam ut in mutuo lucrum cessans juste compensetur, 1^a non sufficit voluntas positiva ex pecunia alio ac mutui contractu non lucrandi; 2^a non requiritur voluntas absolui seu efficax aliunde quam ex mutuo lucrandi; 3^a sufficit vero ac requiritur, eo saltem momento quo mutuum initur, voluntas efficax juste lucrandi, quamvis praeferatur mutuum caeteris contractibus.

Therefore, regarding the will to profit necessary for lost profit in a loan to be justly compensated: A positive will not to profit from the money in any way other than the loan contract is not sufficient. An absolute or effective will to profit from something other than the loan is not required. It is sufficient and required that, at least at the moment the loan is made, there is an effective will to profit justly, even if the loan is preferred over other contracts.

2^a De possibilitate lucrandi. Ita determinata lucrandi voluntate, de lucrandi possibilitate, quae eidem voluntati praesupponitur, vix est cur agatur. Omnibus fatentibus, nuda seu remota potentia, tam pecuniam contractui frugifero applicandi, quam ex eodem contractu lucrum faciendi, non est pretio aestimabilis; e contra,

2. On the possibility of profiting. With the will to profit thus determined, there is hardly any need to discuss the possibility of profiting, which is presupposed by the same will. All agree that a mere or remote potential, both for

potentia probabilis pecuniam contractui frui[^]ifero subjiciendi, utjamdictum est, pro rata probabilitatis compensabilis videtur; praesertim lucrum probabile ex pecunia hujusmodi contractui subacta vel subigenda vendi potest

applying the money to a profitable contract and for making a profit from the same contract, is not estimable at a price. On the contrary, a probable potential for applying the money to a profitable contract, as mentioned above, seems compensable according to the rate of probability; especially since probable profit from money subjected or to be subjected to such a contract can be sold.

Hic attendenda venit secunda conditio supra posita, juxta quam « non exigatur uUra sortem, nisi quantum lucrum illud cessans valere potest. Pro quo adverte, dupliciter posse lucrum cessans in paclum deduci... Primo conditionate, hoc est, mutuataris solvat quantum experientia ostenderit te lucraturum, deductis expensis, in tali negotiatione vel usu cui rem illam destinaveras, v. g. si triticum seminare volebas, quantum alii hoc anno, deductis expensis, seminando lucrabuntur, aut si negotiari volebas, quantum alii tali negotiatione hoc tempore lucrabuntur » (i). Unde c si postea ex eventu deprehensum fuerit, mutuo non dato, lucrum futurum fuisse 100 aureorum, tenetur pro eo solvere 100 (deductis tamen deducendis), si 50, solum 50, si nullum, nihil : id autem sciri poterit vel ex eventu, quem idem mercator in alia pecunia negotiationi exposita experitur, vel quem alii mercatores in simili mercimonii genere versantes, sortiuntur i» (2).

Here, the second condition stated above must be considered, according to which “nothing beyond the principal is demanded, except as much as the lost profit can be valued.” Note that lost profit can be included in the agreement in two ways. First, conditionally, that is, the borrower pays as much as experience shows you would have profited, deducting expenses, in such a negotiation or use to which you had destined the thing, e.g., if you wanted to sow wheat, as much as others will profit this year by sowing, deducting expenses, or if you wanted to negotiate, as much as others will profit at this time by such negotiation. Hence, if it is later found from the event that, had the loan not been given, the future profit would have been 100 gold coins, he is bound to pay 100 for it (deducting what should be deducted), if 50, only 50, if none, nothing. This can be known either from the event that the same merchant experiences with other money exposed to negotiation, or that other merchants dealing in similar kinds of merchandise experience.

c Secundo (lucrum cessans) deduci potest absolute, et non ex adventu futuro, sed exigendo a te ultra sortem, quantum hic et nunc, attento periculo, expensis, et aliis circumstantiis, spes illa valere potest, sive postea lucrum futurum fuisset

Second, lost profit can be included absolutely, and not from a future event, but by demanding from you beyond the principal as much as that hope can be worth here and

majus, sive minus » (3). Et hoc quidem altero modo lucrum cessans in pactum deducitur, cum agitur, ut hodie, de lucro cessante quasi universali seu praesumpto : tunc enim sensus communis, qui lucrum singulo in casu cessare praesumit, ejusdem valorem juste aestimare praesumitur. Unde difficultates jam tolluntur, et inquisitiones casuisticae, quae de eodem valore aestimando in singulis casibus olim faciendae erant, nunc vix non otiosae videntur(4)

now, considering the risk, expenses, and other circumstances, whether the future profit would have been greater or less. And indeed, in this second way, lost profit is included in the agreement when it is about lost profit as almost universal or presumed today: for then common sense, which presumes lost profit in each case, is presumed to justly estimate its value. Hence, difficulties are now removed, and casuistic inquiries, which used to be made about estimating the same value in each case, now seem almost idle.

3^a Mutuum vera sit causa lucri cessantis. Et ita egimus de lucrando voluntate ac possibilitate, quales requirantur et sufficiant ut lucrum cessans sit juste compensabile. Quod vero ad tres conditiones supra positas spectat (i), de tertia nulla difficultas oriri videtur; secunda vero ex modo dictis patet; proinde remanet tantum ut de prima quaedam annotentur : oportet nempe ut « mutuum vera sit causa lucri cessantis » (2). « Haec conditio, ita Wiggers (3), absolute et omnium iudicio est necessaria, quia, illa deficiente, tollitur omne fundamentum istius pactionis, ejusque iustitiae : non enim potest quis aestimare spem lucri cessantis ratione mutui, si vel nullum lucrum ei decedat, aut si aliquod decedat, non tamen ratione mutuationis. »

3. The loan must be the true cause of the lost profit. And so we have dealt with the will and possibility of profiting, which are required and sufficient for lost profit to be justly compensable. As for the three conditions stated above, no difficulty seems to arise regarding the third; the second is clear from what has been said; therefore, it remains only to note something about the first: namely, that “the loan must be the true cause of the lost profit.” “This condition,” says Wiggers, “is absolutely and universally necessary, because, if it is lacking, the entire foundation of this agreement and its justice is removed: for one cannot estimate the hope of lost profit due to the loan if either no profit is lost to him, or if some is lost, not due to the loan.”

a) Ex hac conditione doctores passim inferunt, < requiri quod pecuniam vel rem illam ad negotiandum vel lucrandum destinaveris » (4). Quae destinatio intelligatur oportet juxta ea quae de voluntate lucrandi exposuimus. Ut autem scriptores veteres de hac prima conditione disserentes recte explicentur, praesertim notandum est ab illis inquisitioni suae non praesupponi, «t hodie fieri posset, generalis et propinqua potentia pecuniam negotiationi applicandi. Quod si praecedens babeatur,

a) From this condition, doctors generally infer that “it is required that you have destined the money or thing to negotiation or profit.” This destination must be understood according to what we have explained about the will to profit. To properly explain how the old writers discussed this first condition, it is especially noteworthy that they did not

intelligitur difficultas quae ipsis oriebatur, cum inquirerent « an -dicatur lucrum cessare mutui causa, ita ut pro eo possit aliquid a mutuatario exigere, quando aliquis servavit aliquam pecuniam apud se, quam ideo noluit ad negotiationem applicare, ut haberet ad manus pecuniam pro iis qui mutuo peterent » (i). Et ratio dubitandi vel imo negandi ipsis erat, « quia quando mutuum datur, jam pecunia erat a negotiatione abstracta, et /br4a8se elapsa jam fuerat occasio negotiandi...; quare quando pecunia mutuo datur, non valet plus propter spem lucri : nulla enim jam spes lucri remanet ex tali pecunia; ergo non titulus Justus exigendi ultra sortem » (s). Patet autem difficultatem hanc tunc evanescere, cum, ob adjuncta sive specialia sive generalia, non inde elabatur < occasio negotiandi » quia pecunia huic praecise negotiationi nunc occurrenti non submittitur. Unde non jam ratio est, cur quaesitum hoc juxta duplicem « casum, cum Lessio, vel triplicem, cum Lugone solvatur (3).

presuppose in their inquiry, as could be done today, a general and proximate potential for applying the money to negotiation. If this is kept in mind, the difficulty they faced when inquiring “whether profit is said to be lost due to the loan, so that something can be demanded from the borrower for it, when someone kept some money with him, which he did not want to apply to negotiation, so that he would have money at hand for those who would ask for a loan” is understood. And their reason for doubting or even denying was “because when the loan is given, the money was already abstracted from negotiation, and perhaps the opportunity for negotiation had already passed...; therefore, when the money is given as a loan, it is not worth more because of the hope of profit: for no hope of profit remains from such money; therefore, there is no just title for demanding beyond the principal.” However, this difficulty then vanishes when, due to special or general circumstances, the opportunity for negotiation is not lost because the money is not submitted to this precise negotiation now occurring. Hence, there is no longer a reason why this question should be solved according to a double case, with Lessius, or a triple case, with Lugo.

Nec magis difficile videtur intellectu quomodo mutuum sit vera causa lucri cessantis, quamvis tantum conditionate (nempe, nisi aliquis determinatus, vel nisi multi indeterminati mutuum rogent) pecunia ad negotiationem destinata sit. Etenim cum, eo saltem momento quo mutuo detur, pecunia supponatur absolute ad lucrum destinari, cum insuper praesumatur propinqua possibilitas ex negotiatione lucrandi, mutuum, quovis de motivo initum, vera et objectiva est causa lucri cessantis.

Nor does it seem more difficult to understand how the loan is the true cause of the lost profit, even if only conditionally (namely, unless a specific person or many unspecified people ask for a loan) the money is destined for negotiation. For when, at least at the moment the loan is given, the money is supposed to be absolutely destined for profit, and moreover, a proximate possibility of profiting from negotiation is presumed, the loan, whatever the

	motive, is the true and objective cause of the lost profit.
Quod vero ad caetera spectat quae circa eandem primam conditionem quaeruntur, si bene inspiciuntur, patet rationem dubitandi oriri ex eo quod non agatur de voluntate illa totam pecuniam ad lucrum efflcaciter applicandi, quam praecise praesupponimus (i). Unde ex modo quo auctores circa primam illam lucri cessantis conditionem disserant, nihii contra principia supra de voluntate lucrandi posita objiciendum videtur.	As for the other matters concerning the same first condition, if they are well considered, it is clear that the reason for doubting arises from the fact that it is not about the will to effectively apply all the money to profit, which we precisely presuppose. Hence, from the way authors discuss that first condition of lost profit, nothing seems to be objected against the principles stated above about the will to profit.
b) Ex eadem conditione alterum consecrarium, cum iisdem auctoribus, deducatur. c Quare, ait de Lugo (s), si non ideo a lucro vel negotiatione cessas, quia mutuasti, cum habeas aliam pecuniam qua negotiari posses,... mutuum non est causa quod lucrum cesset. » Quod consecrarium, sane prorsus admittendum, mox patebit quanti sit momenti, mutatis mutandis, ad multorum liodieriias theorias de lucro ex pecunia dijudicandas. Etenim, ut ^epius notavimus, tituli fiduciarrii, obligationes, aliave hujusmodi, nostris temporibus, ita pecuniam et divitias repraesentant, ut iisdem, quemadmodum ipsa pecunia, plerumque negotiatio iucratiya exerceri possir. Unde si credere possis v. g. alicui instituto pecuniam tuam cujus vice recipias titulos qui aequali prorsus modo ac pecunia negotiationis instrumentum habeantur, nescimus quonam fundamento lucri cessantis fleret justa compensatio, cum lucrum revera non cesset, seii cum mutuum pecuniae non sit causa lucri cessantis, et cum secus bis lucreris ex eodem. Hoc in sensu, admitti posset hypothesis a D. Bacuez £acta (1) : c peut-^tre m^me pourrait-on imaginer des pr^ts d'argent consid^rables qui, n'entrainant aucun dommage ni aucun risque pour le pr^teur, ne lui donneraient droit k aucune compensation. Supposez par exemple que celui a qui vous pr^tez ait un credit si assur^ et un acc^s si facile qu'une creance ^ son compte soit regardee comme argent comptant, et que le billet que vous en recevrez soit assez facilement negociable pour vous servir comme de monnaie jusqu'au remboursement. Supposez, si vous voulez, que vous prCliez votre argent h la Banque	b) From the same condition, another consequence is deduced with the same authors. "Therefore," says de Lugo, "if you do not cease from profit or negotiation because you lent, since you have other money with which you could negotiate,... the loan is not the cause of the lost profit." This consequence, which must indeed be admitted, will soon be seen to be of great importance, mutatis mutandis, for judging many modern theories about profit from money. For, as we have often noted, fiduciary titles, obligations, and other such things in our times represent money and wealth in such a way that, like money itself, they can generally be used for profitable negotiation. Hence, if you can believe, for example, that you lend your money to an institution in exchange for titles that are considered as instruments of negotiation in the same way as money, we do not know on what basis just compensation for lost profit would be made, since profit does not truly cease, and since the loan of money is not the cause of the lost profit, and since otherwise you would profit twice from the same. In this sense, the hypothesis made by D. Bacuez could be admitted: "perhaps

<ie France et que vous receviez en retour des billets au porteur semblables a ceux qu'elle a le privil[^]ge d'emettre : quel d[^]dommagement pourrez-vous demander? Ses billets ne valent-ils pas TOtre argent? Le jus ad rem n'est-il pas equivalent aujtt[^] in re. Mais il faut avouer que, si ce cas est possible, il se pr[^]sente rarement. »

one could even imagine considerable loans of money which, causing no damage or risk to the lender, would not give him any right to compensation. Suppose, for example, that the one to whom you lend has such assured credit and easy access that a claim on his account is regarded as cash, and that the note you receive in return is easily negotiable enough to serve you as money until repayment. Suppose, if you will, that you lend your money to the Bank of France and receive in return bearer notes similar to those it has the privilege of issuing: what compensation could you demand? Are not its notes worth your money? Is not the right to the thing equivalent to the thing itself? But it must be admitted that, if this case is possible, it rarely occurs."

At omnia simul principia hic componantur, nec quaedam a «aeteris abstrahantur. Supponimus nempe, etiamsi titulus lucri <5es8antis non adesset, tamen ex tali credito auctarium justum esse, si aliquis alius titulus adesset, puta damnum emergens (2), vel periculum sortis : verum, ut patet, si Jiic litulus periculi ^sortis adsit, rarissime lucrum non cessabit. cum vix intelligatur quomodo, nisi aestimatio communis fallatur, c obligatio » talis[^] periculosa eundem ac pecunia praesens vaiorem hal)eat, et eodem modo possit esse instrumentum negotiationis. Si autem[^] titulus crediti revera omnimode instar pecuniae haberetur, ita ut ex tali credito lucrum non cessaret, nullatenus perspicimus quomodo auctarium justum reciperetur. Liquet insuper, cunk tantum de stricte debito agamus, nos abstrahere a praemioquodam quod institutum tale creditoribus suis gf[^]atuito darevellet.

**But let all the principles be combined here, and not abstracted from each other. We suppose, namely, that even if the title of lost profit were not present, a just increase would still be due from such credit if some other title were present, such as emerging damage or risk of chance. However, as is evident, if this title of risk of chance is present, lost profit will very rarely not occur, since it is hardly conceivable how, unless common estimation is mistaken, such a "dangerous obligation" would have the same value as present money and could be used as an instrument of negotiation in the same way. If, however, the title of credit were truly considered entirely equivalent to money, so that profit would not cease from such credit, we do not see how a just increase would be received. It is also clear that, since we are only dealing with strictly due debt, we are abstracting from a certain reward that such an

Quodsi ad vitam oeconomicam hodiernam respicimus, annom ex principio hic exposito explicandum esset cur revera c ies billets de banque et les chfeques ne porient pas int^rfit » (i)? — < Que si les depdts en banque, remboursables sur demande b⁶neficient d'un leger int^r6t, c'est en raison d'un d⁶lai moyenpour Temploi productif des capitaux. » Ita H. Sabatier (2). Et revera, omittendo explicationem juxta quam leve auctarium] ^ ut gratuitum praemium tribualur ad capitalia quibus lucrentur allicienda, vix negari potest inibi non proprie dictum esse mutuum, cum non includatur tempus determinatum, sed potius videtur contractus alius, sed mutuo affinis — quemadmodum precarium affine est commodato — qui contractus non iisdem omnino principiis quam mutuum proprie dictum regatur (i).	institution might want to give to its creditors for free. If we look at the current economic life, it might be explained from the principle stated here why “banknotes and checks do not bear interest.” “If bank deposits, repayable on demand, benefit from a slight interest, it is because of an average delay for the productive employment of capital.” Thus H. Sabatier. And indeed, omitting the explanation according to which a slight increase is given as a free reward to attract capital with which to profit, it can hardly be denied that it is not properly called a loan, since no fixed time is included, but rather it seems to be another contract, akin to a loan—just as a precarious loan is akin to a commodatum—which contract is not governed by the same principles as a proper loan.
Quidquid vero sit de explicatione praxeos, principium, de quo nunc agitur, nullatenus rejiciendum videtur. Atqui principium hoc admitti nequit, dummodo consequenter agant, ab iis omnibus qui pecuniae in se valorem realiter secernentes ab usu ejusdem, usum in se esse vendibilem propugnant : valorem enim revera penes proprietarium manere, praesertim probant ex valore productivo titulorum fiduciariorum. Ideoque dictum est supra, eosdem auclores, si quid probent, praeter intentum probare : nam illorum svstematice aliquis non tantum ex pecunia credita juste lucratur, sed ex eadem juste V\8 lucratur. Quod prorsus repugnare videtur.	Whatever may be the explanation of practice, the principle under discussion here should not be rejected. However, this principle cannot be admitted, as long as those who separate the real value of money from its use and advocate that the use itself is saleable act consistently: for they prove that the value truly remains with the owner, especially from the productive value of fiduciary titles. Therefore, it was said above that the same authors, if they prove anything, prove beyond their intention: for in their system, someone not only justly profits from lent money but also justly profits from the same. This seems entirely contradictory.
De notione et principiis tituli lucri cessantis illa notasse sufficiat. Haec, rite perspecta, ad praxim crediti hodiedum universim lucrativi explicandam multum conferunt. Etenim imprimis, ob intensitatem vitae oeconomicae, ob facillimam bonorum, etiam immobilium,	It is sufficient to have noted these points about the notion and principles of the title of lost profit. These, properly understood, contribute greatly to explaining the practice of universally profitable

circulationem, ob miram inter omnes totius orbis regiones communicationem, vix adhuc dubium superest rationabile de possibilitate omnibus propinqua et expedita pecuniam negotiationi aliquo modo applicandi. Deinde, praesumi potest probabilitas generalis tali modo ex pecunia lucrandi, quod revera communi aestimatione hodie praesumitur. Proinde, si praesupponitur simul voluntas efficax juste ex pecunia iucrandi, eo ipso, quovis in mutuo pecuniae, titulus lucri cessantis merito praesumitur (i) : ideoque nullatenus jam oportet ut lucrum cessans singulo in casu probetur, nec oportet ut expresse de eodem stipulati sint.

credit today. For, first of all, due to the intensity of economic life, the very easy circulation of goods, even immovable ones, and the remarkable communication between all regions of the world, there is hardly any reasonable doubt left about the possibility of easily and closely applying money to negotiation for everyone. Then, the general probability of profiting in this way from money can be presumed, which is indeed presumed by common estimation today. Therefore, if an effective will to justly profit from money is simultaneously presupposed, the title of lost profit is rightly presumed in any money loan: hence, it is no longer necessary to prove lost profit in each case, nor is it necessary to expressly stipulate about it.

Et haec quidem conclusio ex principiis expositis oritur; at vero conclusio nulla oritur amplior. Itaque attingimus aliquam sententiam hodie in theologia valde usitatam : de qua nunc :s^endum est.

And this conclusion arises from the principles set forth; however, no broader conclusion arises. Thus, we touch upon a certain opinion very common in theology today, which must now be examined.

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A List of Propositions for a Coherent Theory of Usury

Posted on [September 9, 2024](#)

Dogmatic Theology

- The source and origin of usury is the mutuum (Benedict XIV – Vix Pervenit 3.I)
- Any profit over what was lent is usury. (Benedict XIV – Vix Pervenit 3.1)
- Usury is a sin. (Council of Vienne)
- Usury is not excused for being moderate or small. (Benedict XIV – Vix Pervenit 3.II)
- Usury is not excused if the borrower is rich. (Benedict XIV – Vix Pervenit 3.II)
- Usury is not excused if the money is used productively. (Benedict XIV – Vix Pervenit 3.II)
- Usury is not excused by time preference (Innocent XI – Various Errors on Moral Subjects, n. 41)
- Extrinsic titles are not denied. (Benedict XIV – Vix Pervenit 3.III)
- Profit from non-mutuum contracts is not denied. (Benedict XIV – Vix Pervenit 3.III)
- The real census is not usurious. (Callistus III – Regimini Universalis)

- In a real census, the purchaser cannot pursue the seller if the property is utterly destroyed. (Callistus III – Regimini Universalis)

St. Thomas Aquinas

- Usury is found in the mutuum. (ST II-II, q. 78, intro.)
- The mutuum is a matter of restitution, not exchange (ST II-II, q. 62, a. 1, co.)
- The mutuum transfers ownership to the borrower (ST II-II, q. 78, a. 2, ad. 5)
- The borrower is personally liable to return the good come what may to it. (ST II-II, q. 78, a. 2, ad. 5; ST I-II, q. 105, a. 2, ad. 5; Quodlibet V, 1. 9, a. 1;)
- Usury is intrinsically evil. (ST II-II, q. 78, a. 1, co.; De Malo q. 13, a. 4, ad. 11)
- Goods have many uses, some consuming, others not. (ST II-II, q. 78, a. 1, ad. 5; De Malo q. 13, a. 4, ad. 15)
- Goods granted in a mutuum are granted as consumable. (ST II-II, q. 78, a. 1, co.)
- Usury is not solely taken on money. (ST II-II, q. 78, a. 1, co. & ad. 5, & a. 2, co. & ad. 7; De Malo q. 13, a. 4, ad. 15; Quodlibet III, q. 7, a. 2, co.)
- Profit from a *societas* is licit and arises from the retained ownership. (ST II-II, q. 78, a. 2, ad. 5)
- Commodatum grants use apart from substance and use can be sold in a *locatio*. Mutuum transfers ownership and so nothing further can be sold. (Quodlibet III, q. 7, a. 2)

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Quodlibet III.7.2 – De Usura

Posted on [September 9, 2024](#)

<https://aquinas.cc/la/en/~QIII.Q7.A2>

Question: It seems that someone is held to return whatever he gains from usurious money.

Responsio

. Dicendum quod huius quaestionis veritas poterit apparere, si consideretur ratio quare usuram accipere sit peccatum. Non enim est peccatum solum quia est prohibitum, sed quia est contra rationem naturalem, ut etiam Philosophus dicit in *I Politicae*.

Ad cuius evidentiam considerandum quod rerum in usum hominis venientium quaedam sunt quorum usus non est ipsius rei consumptio, et, si contingat rem deteriorari vel consumi per usum, hoc est per accidens; sicut domus, vestis, equus, liber et huiusmodi: non enim uti libro est delere ipsum, neque uti domo est destruere ipsam. Et in talibus aliud est dare usum rei et aliud est dare substantiam rei, et propter hoc, quando per **accommodationem** usus talis rei alteri conceditur, non propter hoc dominium rei transfertur; et propter hoc

I answer that

the truth of this question could be apparent if the reason why usury is a sin were to be considered. For it is not only a sin because it is prohibited, but because it is against the natural order, as even the Philosopher says in the first book of the *Politics*.

For the proof of this, it must be considered that certain things coming into the use of man are those whose use is not the consumption of the thing itself, and it is incidental if the thing is deteriorated or consumed through use, for example a house, a garment, a horse, a book, and things of this sort. For to use a book is not to blot it out, nor is to use a house to destroy it. And in such things to give the use of the thing is one thing and to give the substance of the thing is another. On account of this, when through **accommodation** the use of such a

etiam potest vendi usus rei, dominio rei remanente apud dominum, sicut patet in **conductione et locatione**, qui sunt contractus liciti.

thing is granted to another, the ownership of the thing is not transferred because of this. On account of this, the use of the thing also can be sold, with the ownership of the thing remaining with the lord, just as is clear in **renting and letting**, which are licit contracts.

Quaedam vero res sunt quarum usus nihil est aliud quam consumptio ipsarum rerum, sicut pecunia qua utimur expendendo, vinum quo utimur bibendo, et sic de aliis huiusmodi, in quibus uti re nihil est aliud quam consumere ipsam. Et ideo in talibus quando conceditur usus rei **per mutuum**, transfertur etiam rei dominium. Quia igitur usus rei non est separabilis ab ipsa re, quicumque vendit usum talium rerum retinendo sibi obligationem ad sortem reddendam, manifestum est quod idem vendit bis, quod est contra naturalem iustitiam, et ideo exigere usuram est secundum se iniustum.

Whereas certain things are those whose use is nothing else than the consumption of the things themselves, such as money which we use by spending, wine which we use by drinking, and other things of this sort, in which to use a thing is nothing else than to consume it. And for this reason, in such things, when the use of the thing ~~mutually~~ **[through a mutuum]** is conceded, there is transferred also the ownership of the thing. Therefore, because the use of the thing is not separable from the thing itself, whoever sells the use of such things by retaining an obligation to himself unto returning the capital, it is clear that the same man is selling both, which is against natural justice, and for this reason, to demand usury is according to itself unjust.

Tenetur ergo aliquis id quod accipit ultra sortem restituere, quia iniuste accepit, et per consequens damna et interesse. Sed, cum ipsius pecuniae usurariae non sit alius usus quam ipsa eius substantia, ratione iam dicta, patet consequenter quod, ex quo pecuniam usurariam reddit, de usu pecuniae nihil reddere tenetur. Teneretur autem reddere aliquis id quod lucratus esset de domo aliena vel equo vel aliquo huiusmodi, etiam postquam res huiusmodi reddidisset, quia in talibus appreciatur res et usus rei.

Therefore, someone must be held to return what he receives beyond the capital, because he receives it unjustly, and consequently also to take part in the losses. But since there is not another use of his usurious money than its very substance, by the reasoning already explained it is clear consequently that from the fact that he returns the usurious money, he is not held to return anything for the use of the money. Yet someone would be held to return what he gained from another's home or horse or something of this sort, even after he had returned things of this sort, because in such things the thing and the use of the thing is valued.

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Mutuum as Not an Exchange

Posted on [September 8, 2024](#)

One of the changes of usury is how to appropriate think about the mutuum contract. There are a few ways of characterizing it that are helpful. First of all, it is a sort of commutation and a sort of contract. However, it is not strictly speaking an exchange.

This comes off as a strange way of characterizing the mutuum, because we have commercialized the mutuum. Indeed, many authors consider the mutuum as equivalent to a loan as such. When we distinguish the mutuum from other sorts of contracts, this can be much clearer.

An exchange may be said to be a this-for-that agreement. I give you money for an apple. Or I offer you some labor for a chicken. Or I give you something to use your goods for a time. There is an exchange happening and an exchange transfers something to another and the other transfers something to the first. However, this is not the case in all contract concerning goods.

So, in the case of a commodatum, this is also not the case. The commodatum is often called a loan for or of use. The basic idea is the grant of a good to use it in such a way the good is not consumed. In the concrete, a book loan from a library is commodatum. You can take the book and use it for a time and return the same book back. This is a gratuitous contract. However, the contract is not an exchange. The borrower does not exchange something for the book, but receives the use of it freely and returns or restores it after some time.

This contract may be contrasted with the lease. The lease includes something of the essence of the commodatum, that is the use of the good for a time but restored identically later. The lease is certainly an exchange, but the restoration of the good is not in essence part of the exchange. The exchange is receiving the use of the good for a price. The restoration of the good follows on the nature and justice of the contract, but does not constitute the contract as an exchange.

In this manner of speaking we can talk about the mutuum. Much like the commodatum, there is a good received and restored later. Indeed, this constitutes the whole of the contract. However, this is not an exchange. The appearance of exchange comes in when the good received is not the good that is returned. The borrower must go out and procure some other good and return it to the lender. The conditions of the restoration are different between the commodatum and mutuum, so they are truly essentially different, but the contract consists in a grant of a good restored later, not a grant of this good for that good.

In the question on restitution, Aquinas remarks that restitution is to be made in exact quantity. This provides a firm basis for understanding mutuum because it is grounded in a more fundamental question of restitution. This allows us to consider the restitution that is due from a thief, though this must be treated carefully as the thief takes involuntarily while the borrower takes voluntarily. This then is where the problem of delay comes in. The borrower must restore more than the money borrowed, but also the loss he causes since this is something he takes and needs to restore.

This way of thinking about the mutuum stands in sharp contrast to Fr. Thomas Divine's characterization of the mutuum as an intertemporal exchange. The lender is exchanging money now for money later with time preference applying etc. This is simply the wrong way of thinking about it, because it is impossible to exchange money

now for money later, because when he receives back the money he does not receive it as future but as present and equality is established.

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Structural Analysis of Summa Theologiae q78

Posted on [September 2, 2024](#)

The first move that we must establish is what is the question be asked in question 78. Aquinas doesn't tell us the question, rather he gives us the questions of the articles. However, the importance of these questions presupposes the more fundamental concern of the question. We must not that we are dealing with the question of the **sin** of usury. We are not dealing in simple legalistic terms about the injustice of usury, but the sin. When we turn to think about sin, we are talking about sin as grounded in the theological questions of Beatitude and right relationship with God and others. This provides the essential theological context of the questions on usury. In what ways does the sin of usury represent a disorder or violation of our relationship with God and others. This does not preclude or overshadow the injustice of usury, because justice regulates our relations with others. Rather in bring usury into a deeper context and situates it within a broader vision of the human person and his relation to others and God.

The articles provide a manner at looking at this question. First, we are considering whether one can take a price for the act of lending itself. We know that Aquinas answer to this question is no, but it provides the essential foundation for understanding the later articles. We can't take a price for money lent, but are there other considerations that we might call for some price on money lent? We move from the essence of usury to things that are perhaps incidentally related to the loan. So, the consideration of the act of lending itself has been ruled out, but are there other things that might allow some price to be paid? The third question then concerns restitution. Given now that we have determined what essentially and accidentally can and cannot be taken, what then are we to do when usury has been taken. It seems to be taken for granted that the usuries need to be restored, since this is implied in the former articles as the lender cannot take usury, i.e. he has no claim to it. The question of restitution here becomes what the lender ought to return if he has further used the usuries. He is bound to return the usuries, but is he bound to return what he has profited from the usuries. Having determined the logic of usury and the lender's duty to restitution, we then turn to the borrower. Since usury is evil and it takes a lender and borrower to commit usury, can a man borrow at usury.

We can then dig deeper into the first article and look at the order of the objections. We see here a clear order to the objections. There is a progressive movement from the highest law down. The first objection concerns the eternal law, the mind of God, for it seems that Jesus himself would take usury. The next treats the Divine positive law by looking at the permissive texts of Deuteronomy. We move down further by considering human positive law, which also allows usury. Here then return to the words of Jesus, but he is taken only as counseling "Lend hoping nothing in return," and counsels are non-binding. Now we consider that we are not bound to lend and perhaps we can take a price for what we are not bound to do. The case then turns positive, noting that we can grant in a loan (*commodatum*) silver and take it for a price and since silver money is of the same matter we should be granted in a loan (*mutuum*) money for a price. Finally, the borrower voluntarily binds himself to pay the usury, and so the lender is free (not bound) to take it.

The whole character of the objections in the first article frame the concern as whether or no the lender is bound to not take usury. Each of the objections attacks the claim that the lender is bound from the highest law to the mere will of the borrower to grant it. Aquinas response is to respond that "Yes, we are bound." By examining the nature of the mutuum exchange, how it structures property rights, the manner it differs from a lease, he is able to argue that from the very nature of the act, we cannot take more.

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Van Roey on Lack of Infallibility of Vix Pervenit

Posted on [October 12, 2024](#)

Non esse locutionem ex cathedra, imo potius formam quasi referre decreti alicujus Congregationis, speciali quidem et solemniori modo a S. Pontifice approbati, et ab ipso auctoritative promulgati. Etenim primo exacte refert verba quibus "complectuntur et explicant sententias suas cardinales ac theologi..."; dein addit seipsum "privatum studium conferre in eandem causam non praetermisisse"; tandemque pronuntiat "cum haec ita sin, approbamus et confirmamus quaecumque in sentiis superius expositis continetur."

"It is not an ex cathedra pronouncement, but rather takes the form of a decree of some Congregation, approved in a special and more solemn manner by the Holy Pontiff, and authoritatively promulgated by him. For first, it exactly reports the words by which 'the cardinals and theologians embrace and explain their opinions...'; then it adds that he himself 'has not neglected to contribute private study to the same cause'; and finally he pronounces 'since these things are so, we approve and confirm whatever is contained in the opinions set forth above.'"

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Some Important Works

Posted on [October 7, 2024](#)

St. Antoninus of

Florence: https://www.google.com/books/edition/Sancti_Antonini_archiepiscopi_Florentini/GxE9zI1Hyt0C?hl=en&gbpv=1&dq=Sancti+Antonini+archiepiscopi+Florentini+ordinis+praedicatorum+Summa+Theologica+in+quattuor+partes+distributa&prints ec=frontcover

Domingo

Banez: <https://books.google.com/books?id=cmt2y70zG5oC&printsec=frontcover#v=onepage&q&f=true>

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Pius V – Cum Onus – Latin-English Copilot Translation

Posted on [October 3, 2024](#)

source: https://archive.org/details/gri_33125011258403/page/295/mode/1up

Cum onus Apostolicæ servitutis obeuntes, cognoverimus innumeros celebratos fuisse, & in dies celebrari censuum contractus, qui nedum non continentur intra limites à nostris Antecessoribus eisdem contractibus statutos, verum etiam quod deterius est, contrariis omnino pactiōibus, propterea ardentem avaritiæ stimulum, legum etiam divinarum manifestum contemptum præferunt, non potuimus animarum, prout tenemur saluti consulentes, ac piarum mentium petitionibus etiam satisfaciētes, tam gravi morbo, lætiferoque veneno salutari antidoto non mederi.

While undertaking the burden of Apostolic service, we have recognized that innumerable contracts of census have been celebrated and are being celebrated daily, which not only do not remain within the limits established by our predecessors for such contracts, but also, what is worse, exhibit manifest contempt for divine laws due to the burning stimulus of greed. Therefore, as we are bound to ensure the salvation of souls and to satisfy the petitions of pious minds, we could not fail to remedy such a grave disease and deadly poison with a salutary antidote.

§. 1. Hac igitur nostra constitutione statuimus, censum seu annum redditum creari, constituive nullo modo posse, nisi in re immobili, aut quæ pro immobili habeatur, de sui natura fructifera, & quæ nominatim certis finibus designata sit.

Section 1: Therefore, by this our constitution, we decree that a census or annual income can in no way be created or constituted except in immovable property, or in what is considered immovable, by its nature fruitful, and which is specifically designated by certain boundaries.

§. 2. Rursum nisi vere in pecunia numerata, præsentibus testibus, ac Notario, & in actu celebrationis instrumenti, non autem prius, recepto integro justoque pretio.

§. 3. Solutiones quas vulgo anticipatas appellant, fieri, aut in pactum deduci prohibemus.

§. 4. Conventiones directè aut indirectè obligantes ac casus fortuitos eum, qui alias ex natura contractus non tenetur, nullo modo valere volumus.

§. 5. Quemadmodum nec pactum auferens, aut restringens facultatem alienandi rem censui suppositam, quia volumus rem ipsam semper, & libere, ac sine solutione laudemii, seu quinquagesimæ, aut alterius quantitatis, vel rei, tam inter vivos, quam in ultima voluntate, alienari.

§. 6. Ubi autem vendenda sit, volumus dominum census aliis omnibus præferri, eique denunciari condiciones quibus vendenda sit, & per mensem expectari.

Section 2: Furthermore, unless truly in counted money, in the presence of witnesses and a notary, and at the moment of the instrument's celebration, and not before, with the entire and just price received.

Section 3: We prohibit the payments commonly called anticipations from being made or reduced into an agreement.

Section 4: We decree that agreements directly or indirectly obligating one to fortuitous cases, who otherwise is not bound by the nature of the contract, shall in no way be valid.

Section 5: Likewise, we do not allow any agreement that removes or restricts the ability to alienate the property subject to the census, because we want the property itself to always be freely alienable, without the payment of laudemia, or any other amount or thing, both among the living and in the last will.

Section 6: However, where it is to be sold, we want the owner of the census to be preferred to all others, and to be notified of the conditions under which it is to be sold, and to be waited for a month

§. 7. Pacta continentia morosum census debitorem teneri ad interesse lucri cessantis, vel ad cambium, seu certas expensas, aut certa salaria, aut ad salaria, seu expensas medio juramento creditoris liquidandas, aut rem censui subjectam, five ali-

quam ejus partem amittere, aut aliud jus ex eodem contractu, five aliunde acquisitum perdere, aut in aliquam pœnam cadere, ex toto irrita sint & nulla.

Section 7: Agreements containing clauses that bind the debtor of the census to interest on lost profits, or to exchange, or to certain expenses, or certain salaries, or to salaries or expenses to be liquidated by the oath of the creditor, or to lose the property subject to the census, or any part of it, or to lose any other right acquired from the same contract or otherwise, or to incur any penalty, are entirely null and void.

§. 8. Immo & censum augeri, & novum creari super eadem, vel alia re in favorem ejusdem, aut personæ per eum suppositæ pro censibus temporis vel præteriti vel futuri, omnino prohibemus.

§. 9. Sicuti etiam annullamus pacta continentia solutiones onerum ad eum spectare, ad quem alias de jure, & ex natura contractus non spectarent.

§. 10. Postremò census omnes in futurum creandos, non solum re in totum vel pro parte perempta; aut infructuosa in totum vel pro parte effecta, volumus ad ratam perire, sed etiam posse pro eodem pretio extingui. Non obstante longissimi etiam temporis, ac immemorabili, immò centum & plurium annorum præscriptione; non obstantibus aliquibus pactis directè aut indirectè talem facultatem auferentibus, quibuscumque verbis, aut clausulis concepta sint.

§. 11. Cum verò traditione pretii redditus extinguendus erit, volumus per bimestre ante id denunciari ei, cui pretium dandum erit, & post denunciam intra annum tamen, etiam ab invito pretium repeti posse; & ubi pretium, nec volens intra bimestre solvat, nec ab invito intra annum exigatur, volumus nihilominus quodcumque redditum extingui posse, prævia tamen semper denuncia, de qua supra, & non obstantibus his, de quibus supra, idque observari mandamus etiam quod pluries ac pluries denunciatum fuisset, nec umquam effectus secutus fuisset.

Section 8: Moreover, we absolutely prohibit the census from being increased and a new one created on the same or other property in favor of the same person or a person substituted by him for the censuses of past or future times.

Section 9: Likewise, we annul agreements containing the payment of burdens to him to whom they do not belong by law and by the nature of the contract.

Section 10: Finally, we decree that all future censuses, not only those that are entirely or partially extinguished or unproductive, shall perish proportionally; but also that they can be extinguished for the same price. Notwithstanding even the prescription of a very long time, and immemorial, indeed of a hundred and more years; notwithstanding any agreements directly or indirectly removing such a faculty, in whatever words or clauses they may be conceived.

Section 11: When the income is to be extinguished by the payment of the price, we decree that it be notified two months in advance to the one to whom the price is to be given, and after the notification, within a year, the price can be demanded even from an unwilling party; and where the price is neither paid willingly within two months nor demanded from an unwilling party within a year, we decree that the income can nevertheless be extinguished at any time, always with prior notification as mentioned above, and notwithstanding the above, even if it had been notified many times and no effect had followed.

§. 12. Pacta etiam continentia pretium census extra casum prædictum, ab invito, aut ob pœnam, aut ob aliam causam reperti posse, omnino prohibemus.

§. 13. Contractusque sub alia forma posthac celebrandos fœneratitios judicamus. Et ita illis propterea non obstantibus, quicquid, vel expresse vel tacite contra hæc nostra mandata dari, remitti, aut dimitti contingat, à Fisco volumus posse vendicari.

§. 14. Hanc autem salutiferam sanctionem nedum in censu noviter creando, verum etiam in creato quocumque tempore alienando, modo post publicationem constitutionis creatus sit, perpetuò, & in omnibus servari volumus.

§. 15. Declarantes pretium semel censui constitutum numquam posse, ob temporum aut contractantium qualitatem, seu aliud accidens, nec quoad ultimò contrahentes minui vel augeri.

§. 16. Et licet legem ipsam ad contractus jam celebratos non extendamus, illos tamen omnes in quos sub alia forma pervenerunt census, hortamur in Domino, ut singulos contractus censuræ bonorum Religiosorum subjiciant, & animarum saluti consulant.

Section 12: We absolutely prohibit agreements containing clauses that allow the price of the census to be demanded from an unwilling party, or as a penalty, or for any other reason, outside the aforementioned case.

Section 13: We judge that contracts to be celebrated in the future under another form are usurious. And thus, notwithstanding anything given, remitted, or dismissed expressly or tacitly against these our mandates, we decree that they can be claimed by Christ.

Section 14: We decree that this salutary sanction is to be observed perpetually and in all respects, not only in the creation of a new census but also in the alienation of any created at any time, provided it was created after the publication of this constitution.

Section 15: Declaring that the price once constituted for the census can never be diminished or increased due to the quality of the times or the contracting parties, or any other accident, nor with respect to the last contractors.

Section 16: And although we do not extend this law to contracts already celebrated, we nevertheless subject all those contracts to the censure of religious goods and the salvation of souls, which have come under another form to the census in the Lord.

§. 17. Non obstantibus quibuscumque constitutionibus & ordinationibus Apostolicis, statutis & consuetudinibus, necnon privilegiis & litteris, etiam per quoscumque Romanos Pontifices prædecessores nostros, ac etiam nos sub quibuscumque tenoribus & formis, ac cum quibuscumque clausulis etiam derogatoriis derogatoriis, necnon irritantibus decretis, ex quavis causa, etiam per modum legis universalis, aut aliàs quomodolibet editis, sive in favorem Universitatum, Communitatum, Collegiorum, Congregationum, Civitatum, & locorum concessis, approbatis & innovatis, quibus omnibus & singulis, illorum tenores præsentibus pro expressis habentes, quatenus directè vel indirectè præsentì nostræ constitutioni, in toto vel in parte contrariantur, specialiter & expressè derogamus, ceterisque contrariis quibuscumque.

§. 18. Volumus autem quod præsentibus in Cancellaria & acie Campi Floræ publicentur, & inter constitutiones extravagantes perpetuò valituras conscribantur.

Section 17: Notwithstanding any Apostolic constitutions and ordinances, statutes and customs, as well as privileges and letters, even those granted by any of our predecessors, the Roman Pontiffs, and even by us under any tenors and forms, and with any clauses, even derogatory of derogatories, as well as nullifying decrees, for any reason, even by way of universal law, or otherwise issued in any way, whether granted, approved, and renewed in favor of Universities, Communities, Colleges, Congregations, Cities, and places, all and singular, we specifically and expressly derogate from them, insofar as they directly or indirectly contradict this our present constitution, in whole or in part, and from all other contrary things whatsoever.

Section 18: We also decree that these presents be published in the Chancellery and in the field of Flora, and be inscribed among the perpetual constitutions to be valid.

§. 19. Et quia difficile foret præsentibus ad singula quæque loca deferri, volumus & etiam declaramus, quod earum transumptis etiam impressis, manu

alicujus Notarii publici subscriptis, ac sigillo alicujus Prælati munitis, eadem prorsus fides ubique adhibeatur quæ præsentibus adhiberetur, si forent exhibitæ vel ostensæ.

Section 19: And because it would be difficult to carry these presents to each and every place, we decree that their transcripts, even printed, signed by the hand of any public notary, and sealed with the seal of any Prelate, shall have the same faith everywhere as the presents themselves would have if they were exhibited or shown.

S. 20. Nulli ergo omnino hominum liceat hanc paginam nostræ prohibitionis, annulationis, statuti, mandati, hortationis, derogationis, declarationis & voluntatis infringere, vel ei ausi temerario contraire. Si quis autem hoc attentare præsumpserit, indignationem omnipotentis Dei, ac beatorum Petri, & Pauli Apostolorum ejus, se noverit incursurum.

Datum Romæ apud S. Petrum, Anno Incarnationis Dominicæ millesimo quingentesimo sexagesimo nono, quartodecimo Kal. Februarii, Pont. nostri anno quarto.

Anno à Nativitate Domini millesimo quingentesimo sexagesimo nono, Indictione duodecima, die verò vigesima nona mensis Januarii, Pontificatus Sanctiss. in Christo Patris, & D.N.D. Pii divina providentia Papæ V. anno ejus quarto, retroscriptæ litteræ Apostolicæ affixæ & publicatæ fuerunt Romæ in locis retroscriptis, videlicet ad valvas Basilicæ Principis Apostolorum de Urbe, & in acie Campi Floræ, per nos Camillum Cherubinum & Christianum de Monte, prælibati S.D.N. Papæ Curs.

Jo. Guer. Mag. Curs.

Leetæ & publicatæ fuerunt retroscriptæ litteræ Romæ in Cancellaria Apostolica, Anno Incarnationis Dominicæ millesimo quingentesimo sexagesimo nono, die verò Sabbati vigesima nona mensis Januarii. Pontificat. S.D.N. Pii Papæ V. anno 4.

Sequuntur declarationes dubitationum desuper exortarum.

Section 20: Therefore, let no one at all infringe this page of our prohibition, annulment, statute, mandate, exhortation, derogation, declaration, and will, or dare to contradict it rashly. If anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God and of the blessed Apostles Peter and Paul. Given at Rome at St. Peter's, in the year of the Incarnation of the Lord one thousand five hundred sixty-nine, on the fourteenth day before the Kalends of February, in the fourth year of our Pontificate.

And in the year of the Nativity of the Lord one thousand five hundred sixty-nine, in the twelfth indiction, on the true twenty-ninth day of the month of January, in the fourth year of the Pontificate of our Most Holy Father in Christ, and Lord, Pius V, by divine providence Pope, the aforementioned Apostolic letters were affixed and published in Rome in the aforementioned places; namely, at the doors of the Basilica of the Prince of the Apostles in the City, and in the field of Flora, by us, Camillus Cherubini, Christian of Monte, of the aforementioned S. D. N. Pope's Court.

The aforementioned letters were read and published in the Apostolic Chancellery in Rome, in the year of the Incarnation of the Lord one thousand five hundred sixty-nine, on the true Saturday, the twenty-ninth day of the month of January, in the fourth year of the Pontificate of our Lord, Pius V.

Following are the declarations of doubts arising therefrom.

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Instruction Propaganda Fide – 1793 – Denial of Civil Title

Posted on [November 8, 2024](#)

https://archive.org/details/collectanea_s_congregationis_de_propaganda_fide_pro_apostolicus_missionibus_1893/page/841/mode/1up

Instr. S. C. de Prop. F. 4 Iulii 1793
(AD EP. QUEBECEN.) Nemini incompertum est,

usuram divino, ac naturali iure prohiberi, ex quo consequitur nulla principis auctoritate ac lege permitti posse, quamvis sit exigua. Quidquid enim in mutuo absque titulo lucri cessantis, damni emergentis, aut periculi extrinseci in propria pecunia recuperanda, praeter sortem exigitur, etsi minimum sit, usurae labe conspergitur. Certissima haec iuris principia sunt, quibus nemo ullus catholicorum repugnare potest, quae fusius etiam pertractata invenies in Epistola Encyclica Benedicti Papae XIV cuius exemplum tibi transmitto (V. pag. 855). His constitutis iam vides, legem isthuc latam, quod ex mutuo possent percipi usurae, dummodo fructus non excedant sex nummos pro quolibet centenario, iniquam esse, iurique divino ac naturali adversantem. Itaque catholici neque illius legis praesidio pecuniam foenori dare possunt, neque ullo modo iubere, aut consentire, quod ex illius auctoritate foenus ab aliis recipiatur, aut solvatur, aut iniuste solutum non repetatur. Iudices igitur qui compellunt ad usuras solvendas, vel vetant ne solutae repetantur; advocati qui usurarum patrocinium suscipiunt; notarii qui scienter instrumenta conscribunt favore foeneratorum, graviter peccant, quoniam sunt causa efficax damni mutuuario illati, atque participes sunt criminis a mutuante patrati. Accipe quaeso quod in hanc rem sanxerit Clemens V. Pont. Max. in Concilio Generali Viennensi; sic enim loquitur. « Nos igitur perniciosis his ausibus obviare volentes, » sacro approbante Concilio, statuimus ut qui- » cumque communitatum ipsarum potestates, » capitanei, rectores, consules, iudices, consi- » liarii, aut aliquivis officiales statuta huiusmodi » de caetero facere, scribere vel dictare, aut » quod solvantur usurae, vel quod solutae cum » repetuntur non restituantur plene ac libere, » scienter iudicare praesumpserint, sententiam » excommunicationis incurrant. » Gradum nunc facio ad tutores. Quaestionem quam proposuisti, omnino similem agitat probatissimus theologus gallus Antoine his verbis: « *An liceat tutoribus auctarium exigere pro pecuniis pupillorum mutuatis, eo quod per leges cogantur eorum bona integra reddere, et simul ex eis lucrum facere in commodum eorundem sub poena compensationis?* » Sic autem respondet « *Negative, quia cum usura sit intrinsece mala et a Deo absolute ac indistincte prohibita, nullam ob causam potest esse licita.* » At, inquires, durum est teneri tutores rem utilem pupilli gerere, nullaue alia suppetente lucrandi occasione, adigi ad foeneratitium lucrum captandum, quod si neglexerint, adstringi imperio iudicis ad compensationem cum propria iactura. Verumtamen possunt tutelae officio se excusare; multae enim in iure huius excusationis produntur causae. Sed si quandoque officio iudicis

compellantur, quid erubescunt ante tutelae susceptionem, in actis et coram iudice profiteri, omnem se curam ac diligentiam in pupillari administratione usuros, nunquam tamen pupillaris pecuniae versuram cum fœnore facturos, eo quod catholicae religionis iure id sibi vetitum esse sciunt? Si hac conditione susciperent, nullam posset pupillus in tutorem suum, soluta tutela, actionem intendere ad compensandum lucrum ex usura non perceptum, quoniam ea conditione suscepit, ut ea lege non teneretur.

Praeterea num ne in istis provinciis, quae commercio terra marique florent, deesse potest occasio conficiendi negotia, quibus honesti quaestus absque ulla usurae labe fiant? In his animum atque operam suam tutores intendant, omnique periculo vacabunt cum male gestae tutelae, tum propriae aeternae salutis. Coeterum quocumque tandem modo res casura sit, illud omnino et absque ulla dubitatione est retinendum, minime fas esse tutori lucrum ex fœnore pupillo quaerere, etiamsi suarum fortunarum iacturam facere cogeretur, *quid enim prodest homini, si universum mundum lucraverit, animae vero suae detrimentum patiatur?* Hac una Servatoris Dñi Nostri Iesu Christi sententia omnis sublata est quaestio; quod enim divina lege turpe est et indecorum, qualis certe est usura, propter humanarum rerum commodum nunquam est faciendum.

Caeterum si isti foeneratores ad Sacramentum Poenitentiae accedunt, cum iis agendum est ac cum caeteris lethali peccato obnoxiiis. Suaviter hortandi, monendi, acrius etiam, si oporteat, increpandi, et Dei iudicio, ac poenarum aeternarum terrore ac periculo concutiendi, ut ab usurario fœnore abstineant. Si monitis sacerdotis poenitentiarii pareant, et constantis emendationis argumenta praebeant, sacramentali absolutione erunt expiandi, secus si non respiciant, tunc enim erunt tractandi, quemadmodum caeteri peccatores obdurati, atque indigni Sacramentorum participatione. Habenda quoque ratio est restitutionis lucri ab usurario fœnore percepti. In usura enim, quemadmodum in furto, restitui res debet iniuste mutuataro ablata. Sed nihil te hac de re moror, cum sis ea scientia praeditus, ut probe calleas regulas quae a doctoribus theologiae moralis traduntur; quomodo, quando, a quibus, quo ordine et cui sit facienda rerum ablatarum restitutio.

Latin OCR

Instr. S. C. de Prop. F. 4 Iulii 1793

(an Ep. Quebecen..) **Nemini incompertum est, usuram divino, ac naturali iure. prohiberi, ex quo consequitur nulla principis auctoritate ac lege permitti posse, quamvis sit exigua, Quidquid enim in mutuo absque titulo lucri cessantis, damni**

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Copilot Translation:

It is well known that usury is prohibited by divine and natural law, from which it follows that it cannot be permitted by any authority or law of the prince, however small it may be. For whatever is demanded in a loan beyond the principal, without the title of lost profit, emerging damage, or extrinsic risk in recovering one's own money, even if it is minimal, is tainted with the stain of usury. These are the most certain principles of law, which no Catholic can oppose, and you will find them more fully treated in the Encyclical Letter of Pope Benedict XIV, a copy of which I am sending to you (see page 55). **Given these established principles, you can see that the law enacted there, which allows usury to be received from a loan, provided the interest does not exceed six coins per hundred, is unjust and contrary to divine and natural law.** Therefore, Catholics cannot lend money at interest under the protection of that law, nor can they in any way order or consent that interest be received or paid by others under its authority, or that unjustly paid interest not be reclaimed. Judges who compel the payment of usury, or forbid the reclaiming of paid usury; advocates who take up the defense of usurers; notaries who knowingly draw up instruments in favor of usurers, gravely sin, as they are the effective cause of the harm inflicted on the borrower and participants in the crime committed by the lender. Please accept what Pope Clement V decreed on this matter in the **General Council of Vienne**; he speaks thus: "Therefore, wishing to counter these pernicious practices, with the approval of the sacred council, we decree that any powers, captains, rectors, consuls, judges, councilors, or any officials of these communities who henceforth make, write, or dictate such statutes, or who presume to knowingly judge that usury should be paid or that paid usury should not be fully and freely reclaimed, incur the sentence of excommunication."

Now I turn to guardians. The question you proposed is similarly addressed by the highly esteemed French theologian Antoine in these words: "Is it permissible for guardians to demand an additional amount for the money lent on behalf of their wards, because they are compelled by law to return their property intact and at the same time make a profit for their benefit under the penalty of compensation?" He responds thus: **"Negatively, because since usury is intrinsically evil and absolutely and indistinctly prohibited by God, it can be licit for no reason."**

But you may say, it is harsh for guardians to be obliged to manage the useful affairs of their wards and, with no other opportunity for profit, to be driven to seek usurious gain; if they neglect this, they are compelled by the judge's authority to compensate at their own expense. However, they can excuse themselves from the office of guardianship; many causes for this excuse are provided in law. But if they are sometimes compelled by the judge's office, why should they hesitate to declare before accepting the guardianship, in the records and before the judge, that they will use all

care and diligence in the administration of the ward's property, but will never make a loan with interest from the ward's money, because they know that it is forbidden by the law of the Catholic religion? With this condition, the ward could not bring any action against his guardian to compensate for the profit not received from usury, since he accepted the guardianship under the condition that he would not be bound by that law.

Moreover, in those provinces that flourish in trade by land and sea, there can be no lack of opportunities to conduct business that yields honest profits without the stain of usury. In these, guardians should focus their efforts and attention, avoiding all danger both to the proper administration of the guardianship and to their own eternal salvation. However, in any case, it must be retained without any doubt that it is by no means permissible for a guardian to seek profit from usury for the ward, even if he were compelled to suffer a loss of his own fortune. For what does it profit a man if he gains the whole world but suffers the loss of his soul? This single statement of Our Savior Jesus Christ removes all doubt; for what is shameful and indecent by divine law, such as usury certainly is, can never be done for the sake of human convenience.

Furthermore, if these usurers approach the Sacrament of Penance, they must be treated like other mortal sinners. They should be gently exhorted, admonished, and even sharply rebuked if necessary, and shaken by the fear of God's judgment and the danger of eternal punishment, so that they abstain from usurious lending. If they obey the admonitions of the penitentiary priest and show signs of genuine amendment, they should be absolved sacramentally; otherwise, if they do not repent, they should be treated like other hardened sinners and deemed unworthy of the sacraments. Consideration must also be given to the restitution of profit received from usurious lending. For in usury, as in theft, the unjustly taken property must be restored to the borrower. But I will not dwell on this matter, as you are well-versed in the rules taught by moral theology doctors on how, when, by whom, in what order, and to whom the restitution of taken property should be made.

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Important Documents – Vatican I Schemata

Posted on [November 8, 2024](#)

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Col. 830

§ II.

Foenus, immedicabile societatis vulnus, inusta censoria nota, omni est animadversione dignissimum.

Nec minus grave malum societati impendens est foenus, quo pauperes et egeni miserandum in modum opprimuntur; quod et innumerabilium foeneratorum facit cauteriatam conscientiam; qui-que perfricta fronte audacter supremum perditionis iter magnis itineribus currere videntur, et inanes causas praetexentes, eo temeritatis deveniunt, ut sacrosanctae iustitiae fines se non excedere arbitrentur. Hinc statuendae sunt normae magis ac magis clarae ac planae quoad conditiones, quibus positis foenus possit iustificari; simulque illa sacrae Scripturae verba „mutuum date, nihil inde sperantes“ clarius explicanda; nedum a Sacra Poenitentiaria non esse inquietandos prolatae declarationes¹, iuxta Mastrofini theoreticen².

OCR of Latin

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Copilot Translation:

§ II.

Usury, the incurable wound of society, marked with a censorious note, is worthy of all condemnation.

No less grave is the evil of usury threatening society, by which the poor and needy are miserably oppressed; it also sears the conscience of countless usurers, who, with brazen faces, boldly seem to rush headlong on the path of perdition, and, under the pretext of empty causes, reach such a level of audacity that they do not consider themselves to be exceeding the bounds of sacred justice. Hence, clearer and more straightforward norms must be established regarding the conditions under which usury can be justified; at the same time, the words of Sacred Scripture, "lend, expecting nothing in return," must be more clearly explained; nor should the declarations issued by the Sacred Penitentiary, according to Mastrofini's theory, be disturbed.

Footnotes:

¹ Hae exstant in praesenti Collectione t. VI. pag. 682 sq.

² „Le Usure“, libri tre. Roma 1831. Num autem declarationes Romanarum Congregationum innitantur reapse theoria a Marco Mastrofini prolata, dubium est.

Col. 865-866

10. Postulatum de usura.

Beatissime Pater!

Cum in Sacrosancta Synodo Vaticana non ea tantum, quae ad Fidem tuendam novosque errores refellendos, sed et quae ad Christianorum mores reformandos spectant, tractari oporteat; Tuae Beatitudini, quae Venerabilibus praefatae Synodi Patribus feliciter praest, Hydruntinus Archiepiscopus humiliter ac reverenter nonnulla, quae ad morum reformationem pertinere ipsi videntur, exponenda breviter ducit.

Inter innumera vitia, quae in Christiana Republica invaluere, non ultimum locum obtinuisse videtur *usura*, quamvis et Sacrarum Scripturarum testimoniis prohibita, et innumeris legibus, decretis ac declarationibus fuerit ab Ecclesia semper interdicta. Quibus inhaerens Benedictus XIV. F. R., Apostolicis Litteris *Vix pervenit*, anno 1745. ad Italiae Episcopos datis, fusiori sermone Catholicam doctrinam explanavit, docens 1. Usuram sive manifeste suam malitiam prodat, sive sub aliorum contractuum pallio suum virus involvat, in mutuo propriam sedem et locum habere. 2. Mutuum autem contractum esse, qui sui natura aequalitatem inter datum et acceptum expostulat, proindeque gratuiti contractus nomine gaudere, nihilque inde, ratione ipsius mutui, posse mutuantem quidem sperare. 3. Eos demum, qui contra egerint, in commutativam iustitiam peccare, ideoque ad restitutionem teneri. Qua catholica doctrina, unanimiter in scholis ac universim a doctoribus constanter tradita, Pastores ac Praedicatores Fidelium mentes, ac praesertim lucris inhiantium imbuere nunquam destiterunt, ut omnes ab usurae vitio deterrerent; namque sicut usuris

peffum datur mutuatariorum familiaris substantia, sic et mutuantes animae suae detrimentum certo patiuntur, ac plerumque suorum etiam dispendium bonorum.

Cum autem occasione mutui, ut a laudato Summo Pontifice habetur, nonnulli possint extrinsecus tituli occurrere et contractum comitari, puta *lucrum cessans, damnum emergens, amittendae sortis periculum* etc.; tunc, compensationis ratione sic dictante, aliquid, ad iustitiae normam, percipi posse supradicti Doctores et Pastores pariter christianum populum docentes, negare non sunt ausi, eo quod non vi mutui, sed alio titulo omnino extrinseco aliquid ultra sortem percipiatur.

At pluribus abhinc annis, neminem latet, nonnullos Catholicos Doctores novam quasi sententiam tenuisse ac docuisse: „posse, nempe, civilem Principem ad reipublicae bonum quam maxime tuendum, ac praecipue ad commercium promovendum, eminentis dominii iure mutuatarios taxare ad certum auctarium in mutuantium commodum, seu praemium, ut dicunt,“ ita ut, ultra notos titulos extrinsecos lucri cessantis, damni emergentis et periculi amittendae sortis, novum extrinsecum titulum, scilicet *Principis legem*, admitti oporteat.

Interim Theologis hinc inde disputantibus de hoc nuper in-
vecto titulo, Sacrae Poenitentiariae proposita fuit quaestio: „Num cogendus esset ad restitutionem poenitens, qui sine alio extrinseco titulo, occasione mutui auctarium scutorum quatuor in quovis centenario, vi civilis Legis tantum, perceperat.“ — Eminentissimus Poenitentiarius respondit: *dictum Poenitentem non esse inquietandum, dummodo in bona fide esset, et paratus stare iudicio Apostolicae Sedis.* Quae responsio procul dubio non ad normam absolutam et perpetuam exhibendam fuit prolata. Eñus Poenitentiarius enim, hinc probe sciens, quot contra usuram habeantur Decreta et Declarationes, inde vero Catholicorum Doctorum (qui in rebus dubiis stant pro possessionis iure servando, donec evidens dominii titulus ipsi possessioni refragetur) sententiam non audens damnare, pro re nata tantum provisoriam quasi regulam dare voluit, donec a Romano Pontifice supremum latum fuerit iudicium.

Posita vero praedicta responsione, quae recentiori Theologorum opinioni videtur favere, non pauci inde, sive sua malitia, sive culpabili inconsideratione, aut infirmitate, occasionem arripiunt aut peccandi, aut in suo peccato permanendi. Praetermisso enim, quod aliqui iudicant generatim quamlibet usurae quantitatem a Sacra Poenitentiaria tolerari (prout notorius quidam usurarius, qui non auctarium scutorum quatuor tantum, iuxta legis taxam, sed ultra decem, pro centenario exigebat, oratori Episcopo, cum ad poenitentiam hortanti, respondit, Summum Pontificem iam prohibuisse hac de re Poenitentes inquietari): generatim qui S. Poenitentiariae provisoriam regulam recte intelligunt, licet coram Confessariis affirmant se paratos ad restitutionem, cum hoc ab Apostolica Sede decernatur: facto tamen tum ipsi, tum eorum haeredes, decursu diuturni temporis, quamdiu Ecclesia, vel Summus Pontifex, iudicium differat, restitutionis oneri implendo impares passim fiunt.

Quapropter videtur in hac causa supremum iudicium non posse diutius contineri, tum quia non agitur de Ritibus ad Divini Cultus essentiam non spectantibus (quo in casu, salva fidei ac morum doctrina, possunt decreta ad longum etiam tempus differri), sed de commutativa iustitia, cuius violatio, si exstat, restitutionis onus inducit, cui quam citius debet satisfieri: tum quia tractu temporis, ut paulo ante est expositum, neque mutuantes, neque haeredes, si forte teneantur, restitutioni faciendae invenientur pares.

Quibus breviter expositis, Archiepiscopus orator Sacrosanctum Vaticanum Concilium, seu universam Ecclesiam congregatam humiliter appellans, super expositis supremum iudicium expectat; cumque ipsa a Spiritu veritatis regatur, et columna ac firmamentum sit veritatis, nonnisi catholicae veritati congruum iudicium expectandum.

Superest, ut orator Archiepiscopus, genibus provolutus, Beatitudini Tuae pedes deosculando profiteatur, a Te tamquam Petra omnem Ecclesiae praerogativam derivare; cumque in Petri persona tibi olim a Christo dictum fuerit: *pro te rogaui, ut non deficiat fides tua*, a Te praecipue supremum iudicium sicut in exposita causa, ita in omnibus, quae ad fidem spectant, una cum universa Ecclesia praestoletur; et cum ipsa *falli nescium Te agnoscens* ac feliciter praedicans humiliter demum se subscribat.

Hydrunti die 28. Ianuarii 1870.

† Vincentius Andreas Archiep. Hydruntinus.

Latin OCR

Postulatum de usura.

Beatissime Pater!

Cum in Sacrosancta Synodo Vaticana non ea tantum, quae ad Fidem tuendam novosque errores refellendos, sed et quae ad Christianorum mores reformatos spectant, tractari oporteat; Tuae Beatitudini, quae Venerabilibus praefatae Synodi Patribus feliciter praeest, Hydruntinus Archiepiscopus humiliter ac reverenter nonnulla, quae ad morum reformationem pertinere ipsi videntur, ex-

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Cum autem occasione mutui, ut a laudato Summo Pontifice habetur, nonnulli possint extrinsecus tituli occurrere et contractum comitari, puta lucrum cessans, damnum emergens, amittendae sortis periculum etc.; tunc, compensationis ratione sic dictante, aliquid, ad iustitiae normam, percipi posse supradicti Doctores et Pastores pariter christianum populum docentes, negare non sunt ausi, eo quod non vi mutui, sed alio titulo omnino extrinseco aliquid ultra sortem percipiatur.

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dominii titulus ipsi possessioni refragetur) sententiam non audens damnare, pro re nata tantum provisoriam quasi regulam dare voluit, donec a Romano Pontifice supremum latum fuerit iudicium. Posita vero praedicta responsione, quae recentiori Theologorum opinioni videtur favere, non pauci inde, sive sua malitia, sive culpabili inconsideratione, aut infirmitate, occasionem arripiunt aut peccandi, aut in suo peccato permanendi. Praetermisso enim, quod aliqui iudicant generatim quamlibet usurae quantitatem a Sacra Poenitentiaria tolerari (prout notorius quidam usurarius, qui non auctarium scutorum quatuor tantum, iuxta legis taxam, sed ultra decem, pro centenario exigebat, oratori Episcopo, eum ad poenitentiam hortanti, respondit, Summum Pontificem iam prohibuisse hac de re Poenitentes inquietari): generatim qui S. Poenitentiariae provisoriam regulam recte intelligunt, licet coram Confessariis affirment se paratos ad restitutionem, cum hoc ab Apostolica Sede decernatur: facto tamen tum ipsi, tum eorum haeredes, decursu diuturni temporis, quamdiu Ecclesia, vel Summus Pontifex, iudicium differat, restitutionis oneri implendo impares passim fiunt.

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Copilot Translation

Request regarding usury.

Most Blessed Father,

Since in the Holy Vatican Synod, not only matters concerning the defense of the Faith and the refutation of new errors, but also those concerning the reform of Christian morals must be addressed, the Archbishop of Otranto humbly and respectfully deems

it necessary to briefly present to Your Beatitude, who happily presides over the Venerable Fathers of the aforementioned Synod, some matters which seem to him to pertain to the reform of morals.

Among the countless vices that have prevailed in the Christian Republic, usury appears to have held no insignificant place, although it has been prohibited by the testimonies of Sacred Scriptures and has always been interdicted by innumerable laws, decrees, and declarations of the Church. Adhering to these, Benedict XIV, of blessed memory, in his Apostolic Letter "Vix pervenit" given to the Bishops of Italy in 1745, explained Catholic doctrine in more detail, teaching: 1. Usury, whether it openly reveals its malice or hides its poison under the guise of other contracts, has its proper place in loans. 2. The loan contract by its nature demands equality between what is given and what is received, and therefore enjoys the name of a gratuitous contract, and nothing can be hoped for by the lender by reason of the loan itself. 3. Those who act otherwise sin against commutative justice and are therefore bound to restitution.

This Catholic doctrine, unanimously and constantly taught in schools and universally by doctors, has never ceased to be instilled by pastors and preachers of the faithful, especially those eager for profit, to deter all from the vice of usury; for just as the family substance of borrowers is ruined by usury, so too the souls of lenders suffer certain harm, and often also the loss of their goods.

However, on the occasion of a loan, as held by the aforementioned Supreme Pontiff, some external titles may occur and accompany the contract, such as lost profit, emerging damage, the risk of losing the principal, etc.; then, by reason of compensation, something can be received according to the norm of justice, as the aforementioned doctors and pastors teaching the Christian people have not dared to deny, because something beyond the principal is received not by the force of the loan, but by an entirely extrinsic title.

But for many years now, it is known to all that some Catholic doctors have held and taught a new opinion: "that the civil ruler, for the greatest possible good of the republic and especially to promote commerce, can, by the right of eminent domain, tax borrowers to a certain premium for the benefit of lenders," so that, beyond the known extrinsic titles of lost profit, emerging damage, and the risk of losing the principal, a new extrinsic title, namely the law of the ruler, must be admitted.

Meanwhile, as theologians debated this newly introduced title here and there, the Sacred Penitentiary was presented with the question: "Should a penitent who, without any other extrinsic title, received an additional four scudi per hundred solely by virtue of civil law on the occasion of a loan, be compelled to restitution?" The Most Eminent Penitentiary responded: the said penitent should not be disturbed, provided he was in good faith and prepared to abide by the judgment of the Apostolic See. This response was undoubtedly not given to establish an absolute and perpetual norm. The Most Eminent Penitentiary, knowing well the numerous decrees and declarations against usury, and not daring to condemn the opinion of Catholic doctors (who, in doubtful matters, stand for the right of possession until an evident title of dominion opposes that possession), intended to give only a provisional rule for the time being, until the Supreme Judgment was issued by the Roman Pontiff.

However, given the aforementioned response, which seems to favor the more recent opinion of theologians, many, either through their own malice, culpable inconsideration, or weakness, take the opportunity either to sin or to persist in their sin. For instance, some judge that any amount of usury is generally tolerated by the Sacred Penitentiary (as a notorious usurer, who demanded not just an additional four scudi according to the legal rate, but more than ten per hundred, responded to the bishop urging him to penance, that the Supreme Pontiff had already prohibited disturbing penitents on this matter): generally, those who correctly understand the provisional rule of the Sacred Penitentiary, although they affirm before confessors that they are ready for restitution when this is decreed by the Apostolic See, in fact, both they and their heirs, over a long period, as long as the Church or the Supreme Pontiff defers judgment, become generally unable to fulfill the burden of restitution.

Therefore, it seems that the Supreme Judgment in this case cannot be delayed any longer, both because it does not concern rites not pertaining to the essence of Divine Worship (in which case, preserving the doctrine of faith and morals, decrees can be deferred for a long time), but concerns commutative justice, whose violation, if it exists, induces the burden of restitution, which must be satisfied as soon as possible; and because, over time, as explained a little earlier, neither lenders nor their heirs, if they happen to be bound, will be found equal to making restitution.

Having briefly explained these matters, the Archbishop, the petitioner, humbly appeals to the Holy Vatican Council, or the entire assembled Church, expecting the Supreme Judgment on the matters presented; and since it is governed by the Spirit of truth and is the pillar and foundation of truth, only a judgment congruent with Catholic truth is to be expected.

Finally, the petitioner Archbishop, prostrate on his knees, professes by kissing Your Beatitude's feet, that from You, as the Rock, all the prerogatives of the Church are derived; and since it was once said to you by Christ in the person of Peter: "I have prayed for you, that your faith may not fail," he especially awaits the Supreme Judgment from You in the matter presented, as in all matters pertaining to faith, together with the entire Church; and recognizing and happily proclaiming You as infallible, he humbly subscribes himself.

Postulatum de usura ¹.

Eminentissimi Domini et Revmī Patres.

Subscripti Episcopi necessitatem Universalis Ecclesiae prae oculis habentes officii sui esse ducunt, iuxta Apostolicas literas SS. D. N. incip. *Multiplices inter* § 2., Eminentias et PP. Vestras enixe rogare, ut in Concilio Vaticano proponatur Schema de mutuo et usuris ad conficiendam definitionem, quam opportunam, imo et necessariam existimant sive ad plenam conscientiarum fidelium tranquillitatem sive ad illustrandas et confirmandas quamplures ab Apostolica Sede datas responsiones, definitivam sententiam haud quidem continentes, sed in futurum reservantes.

Cum vero nonnullis Concilii Patribus exhibita fuerint quaedam exemplaria consultissimi voti, in quo duplex acrior quaestio, tum de lucro in mutuo iuxta hodiernas societatis condiciones, tum de lucro vi legis civilis taxato, perspicue enucleatur ac solide resolvitur, ab Eminentissimis ac PP. Vestris suppliciter petunt, ut praevia illius Voti distributione, superallatae quaestiones ab Oecumenico Concilio in fidelium bonum dirimantur.

Romae hac die 25. Martii 1870.

- † Benvenutus Archiep. Granatensis.
- † Marianus Iosephus Archiep. Bonaërens.
- † Petrus Archiep. de Guadalaxara.
- † Iosephus Ignatius Archiep. Quitensis.
- † Iosephus Ignatius Episc. Riobambensis.
- † Anastasius Archiep. Burgensis.
- † Antonius Archiep. Traianopolitanus.
- † Silvester Archiep. de Venezuela.
- † Petrus Archiep. Platenus.
- † Ioannes Baptista Episc. Tulancingensis.
- † Franciscus Episc. Sancti Severini in Piceno.
- † Nicolaus Pace Episc. Amerinus.
- † Bernardus Archiep. de Guatemala.
- † Calixtus Episc. Pacensis.
- † Ioannes Ambrosius Episc. Puniensis.
- † Pelagius Archiep. Mexicanus.
- † Carolus Maria Episc. Angelopolitanus.
- † Germanus Episc. de Chiapa.
- † Ignatius M. Episc. de Zacatecas.
- † Ambrosius Episc. de Chilapa.

OCR of Latin:

Postulatum de usura ¹.

Eminentissimi Domini et Revmi Patres.

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enixe rogare, ut in Concilio Vaticano proponatur Schema de mutuo et usuris ad conficiendam definitionem, quam opportunam, imo et necessariam existimant sive ad plenam conscientiarum fidelium tranquillitatem sive ad illustrandas et confirmandas quamplures ab Apostolica Sede datas responsiones, definitivam sententiam haud quidem continentes, sed in futurum reservantes.

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Copilot Translation:

Request regarding usury.

Most Eminent Lords and Reverend Fathers,

The undersigned bishops, considering the necessity of the Universal Church, deem it their duty, according to the Apostolic letters of Our Most Holy Lord, beginning with "Multiplices inter" § 2, to earnestly request Your Eminences and Reverend Fathers to propose in the Vatican Council a draft on loans and usury to formulate a definition, which they consider both appropriate and necessary for the complete peace of conscience of the faithful and to illustrate and confirm numerous responses given by the Apostolic See, which do not contain a definitive sentence but reserve it for the future.

Since some copies of a very consultative opinion, in which the twofold sharper question, both of profit in loans according to the current conditions of society and of profit taxed by civil law, is clearly elucidated and solidly resolved, have been presented to some Fathers of the Council, they humbly request Your Eminences and Reverend Fathers, after the distribution of that opinion, to resolve the above-mentioned questions for the good of the faithful by the Ecumenical Council.

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Van Roey – Aquinas on Money

Posted on [December 9, 2024](#)

CAPUT II. PRINCIPIA SOLUTIONIS
FUNDAMENTALIA INQUIBUNTUR JUXTA
SCIENTIAM SCHOLASTICAM. Schola historica,
quam in scientia oeconomica moderna
fundavit W. Roscher (i), eifecit ut, attentione
in Medii aevi doctrinas directa, periodus
scholasticorum non jam barbara ac incult»

CHAPTER II. THE FUNDAMENTAL
PRINCIPLES OF SOLUTION ARE
EXAMINED ACCORDING TO
SCHOLASTIC SCIENCE. The historical
school, founded in modern economic
science by W. Roscher, has led to the
period of the scholastics being regarded

habeatur, sed imo scientia pollens vera et profunda. c Das eine^ solche Zeit, ila anno 1869 H. Contzen (?), discipulus Roscher, auch einen entschieden bedeut^nden Kreis sozialer und okonomischer Ideen besitzen musste, lehrt schon der fluchtigste Blick in die Werke eines Thomas von Aquino,... eines Dantes, und nrieler anderen... deren Schriflen die Ansicht griindlich widerlegen, dass im Mittelalter eine volkswirtschaftliche Theorie nicht vorhanden gewesen sei. » Cui asserto omnino assentiendum jest; addendum imo, perMedium aevum, ^Aeoriam oeconomicam a factis oeconomicis abstractam considerari posse, et apte considerari; sub hoc respectu E. De Girard consentimus scribenti : € un autre trait semble encore se d6gager de la p6riode m6dife^ale...: c'est Ja manifere dont i'id6e pr6c6de et fa^onne le fait, dans le plus grand nombre des cas, ou, si Ton prfeffere, la teiir dance antiopportuniste... Dans Tanalyse d'une 6poque constitu6e de la sorte, la recherche du principe doit logiquement avoir la priorit^ » (i). Cum ita sentiant qui hisloriae oeconomicae conscribendae incumbant, a fortiori nobis liceat, doctrinas potius ;pro scopo inquirentibus, directe in se ipsum systema scolasticorum inspicere, et quidem ex professo, prout possibile erit, a factis contingentibus abstractum. Exinde pateat utrum necne doctrina scolastica de diversissimis contractibus, primo aspectu 'Contradictoriis, nitatur principiis quibusdam altioribus ac immutabilibus, quamvis variam pro adjunctis praxim gignentibus.

not as barbaric and uncultured, but rather as possessing true and profound knowledge. As H. Contzen, a disciple of Roscher, wrote in 1869: "Such a time must have had a decidedly significant circle of social and economic ideas, as even a cursory glance at the works of Thomas Aquinas, Dante, and many others, whose writings thoroughly refute the notion that there was no economic theory in the Middle Ages, teaches us." This assertion must be fully agreed with; moreover, it should be added that during the Middle Ages, economic theory can be considered abstracted from economic facts, and appropriately so. In this respect, we agree with E. De Girard, who writes: "Another trait seems to emerge from the medieval period: it is the way in which the idea precedes and shapes the fact, in most cases, or, if one prefers, the anti-opportunistic tendency... In the analysis of such a period, the search for the principle must logically have priority." With this in mind, those who are engaged in writing economic history should, all the more, allow us, who are inquiring into doctrines for their own sake, to directly examine the scholastic system itself, and indeed, as far as possible, abstracted from contingent facts. From this, it will become clear whether or not the scholastic doctrine on various contracts, seemingly contradictory at first glance, is based on certain higher and immutable principles, despite generating varying practices according to circumstances.

Quod de intento nostro ac methodo praenotandum velimus, tum hodie adhuc communior pervulgetur opinio, neminem doctrinis oeconomicis Medii aevi scientifice posse studere, nisi discernat inter tempora, regiones ac auctores : quae opinio isupponit doctrinas ipsas contingentes fuisse ac varias,

As for our intention and method, it is still a common opinion today that no one can study the economic doctrines of the Middle Ages scientifically without distinguishing between times, regions, and authors. This opinion assumes that the doctrines themselves were

eodem modo quo facta et accidentia vitae
oeconomicae. Quodsi corticem rodere
intenderemus et externam sententiarum
evolutionem describere, sane illa esset
utendum methodo : at medullam Tolumus
attingere, et inquirere annon ipsi accidentali
doctrina Tum evolutioni principia altiora
praesint.

contingent and varied, in the same way
as the facts and accidents of economic
life. If we intended to gnaw at the bark
and describe the external evolution of
opinions, that method would indeed be
necessary. But we aim to reach the core
and inquire whether higher principles
are present in the accidental evolution
of doctrines.

Et imprinffis, hoc Capile allero, de mtura
capUalii m dkto» «ystemate adstncti, si
levera est ddstraetKm, ageiidiiBi est :
Aemmmt Mtem vel termiBologia non
CQramdnm. Scd, cum im sdentia modema
agi^ semper in recto de capitali, cui pecQBMi
^asi cmifimdatiir, em» econtra in seientia
seolastica piaesertiDa praestritatur natufa
pecuniae, magis canvenire videtur si beie
iBTerso ac supra ordfate procedamiKS,
inquirendo ante obsma deintima pecumae
ratione : qua posita, caetera jam capitalis^
«lemaita planiorem locum invement.

And first of all, in this second chapter, if
we are to deal with the nature of capital
in the aforementioned system, it must
be done with a serious abstraction. For
the terminology is not common. But,
since in modern science the discussion
always revolves around capital, which is
almost equated with money, whereas in
scholastic science the nature of money
is primarily emphasized, it seems more
appropriate to proceed in the reverse
and above-mentioned order, by first
inquiring into the intimate nature of
money. Once this is established, the
other elements of capital will find a
clearer place.

ARTICULUS I. DE RATIONE ET NATURA
PECUNIAE. Antequam, araborum operum
gratia, Aristotelis scripta ad! notitiam
pervenerunt theologorum occlidentalium,
quae de natura pecuniae in Europa
inveniuntur rariora sunt ac fenuiora, quam ut
exinde intima ejusdem ratio desumatur (i).
Sed post opera Philosophi in scholis cognita,
ipsius pecuniae notio ubique est admissa.
Caeteroquin, recentioribus doctissimisque
elucubrationibus (2) constat metallum
monetatum primordiis Uedii aevi non
frequentem exstitisse, paulatim vero,
commercio^ progrediente, in Europam
meridionalem ac occidentalem esse
invectum, tandemque, longum post tempus,
in septentrionalem M ^ntaieBi : tlui
odconfomicfl ipsdram fennni eommut&tione
itl^ttir (i), et ita expifcMnr cnr tardiu^

ARTICLE I. ON THE REASON AND
NATURE OF MONEY. Before the works
of Aristotle became known to Western
theologians through the efforts of Arab
scholars, the writings on the nature of
money found in Europe were rarer and
more sparse, making it difficult to
derive its intimate nature from them.
But after the Philosopher's works were
known in the schools, the notion of
money was universally accepted.
Moreover, recent and very learned
studies have shown that coined metals
were not common in the early Middle
Ages, but gradually, as commerce
progressed, they were introduced into
southern and western Europe, and
finally, after a long time, into northern
Europe. This conforms to the exchange
of goods themselves, and thus explains

r^{ap}eriantur censu f^{er}ilec^{er}ffitia, nec jam fructibus naturaiibus, seluti (2);

why monetary assessments were found later, and no longer in natural products.

De intima pecuniae ratione, pro externis adjunctis, per hoc tempus, multum inquisiverunt. Cui enim ab una parte commercium inter varias regiones latius extenderetur, cumque ab altera parte jus monetandi inter principes, duces, comites civitates divideretur, qui maiorem monetae intrinsecum pro libitu frequentius adulterarent, — exemplo sit infame rex Galliae Philippus cognomine Pulcher, — inde effectum est ut magis ac magis doctores illum valorem pecuniae intrinsecum inspecterent, et vera pecuniae scientia saeculo tandem XIV enasderetur (3). Verum, si fallimur, a ratione genuina pecuniae, qualis a veteribus Scholae doctoribus statuta erat, quamvis pro tempore alterutri ejusdem rationis elemento insisterent, numquam recesserunt : quod, ut speramus, ex praesenti expositione constabit. Loquentes de pecunia, scolastici sensu proprio et communiter agnito (4) « pecuniam numeratam » seu monetam intelligunt, id est nummos materiales ex metallo plus minusve pretioso confectos (5). Perperam exinde Endemann deducit notionem pecuniae penes scolasticos, secus ac apud romanos, « materialem » (todte Sache) factam esse, adeoque viam notioni capitalis genuinae esse praecusam (6). Sane non negandum est veteres latinos « pecuniam » frequenter, sensu etiam juridico, pro omni re cui valor inest, quaeque dominio privato subesse potest, adhibuisse : « pecuniae nomine non solum numerata pecunia, sed omnes resiam soli quam mobiles et tam corpora quam iura continentur » (7). Sed nec negandum sensum hunc apud latinos ex cultos non primum fuisse, at derivatum. Insuper infem sensus ab antiquis, praesertim ab Aristotele, iam scientiam scolasticam inductus, deprehenditur in Corpore juris canonico, huiusque commentariis, in doctorum operibus a S. Thoma ad Lessium et ultra (2). Quodsi huic significationi

During this time, much inquiry was made into the intimate nature of money, considering external circumstances. On one hand, commerce was expanding widely between various regions, and on the other hand, the right to mint money was divided among many princes, dukes, counts, and cities, who frequently adulterated the intrinsic value of money at will—an unfortunate example being King Philip IV of France, known as Philip the Fair. As a result, scholars increasingly disregarded the intrinsic value of money, and true monetary science finally emerged in the 14th century. However, if we are not mistaken, they never deviated from the genuine nature of money as established by the ancient Scholastic doctors, even though they might have focused on different elements of this nature over time. This, we hope, will be confirmed by the present exposition. When speaking of money, the Scholastics, in the proper and commonly accepted sense, understand “coined money,” that is, material coins made from more or less precious metal. Endemann incorrectly deduces from this that the notion of money among the Scholastics, unlike among the Romans, became “material” (a dead thing), and thus the way to the genuine notion of capital was blocked. It is true that the ancient Romans frequently used “money,” even in a legal sense, for anything that has value and can be privately owned: “By the name of money, not only coined money but all things, both immovable and movable, both corporeal and incorporeal, are included.” However, it cannot be denied that this sense was not primary but derived among the cultivated Romans. Moreover, the same

momentum non imponant[^] nec systema supraedifieent, non est ipsis vitio vertendum : cum nec apud romanos sensus talis ad naturam contractus mutui, qui circa pecuniam versabatur, determinanda usuveneret (3), nec generatim moderni placito ab Endemann praesupposito (4) assentiantur. Etenim, nec romani, nec scolastici, nec communiter moderni, quamvis omnia possessa, adeoque capitale productivum, « pecuniam » possint vocare et nonnumquam vocent, ideo tamen ullatenus, cum Endemann nonnullisque aliis, infirmant omnia bona et imprimis capita esse pecuniam, [^]el imo omnium proprietates in pecunia quasi collectas inveniri et formaliter ipsi inesse.

sense, introduced into Scholastic science by the ancients, especially by Aristotle, is found in the Corpus Juris Canonici, its commentaries, and in the works of scholars from St. Thomas to Lessius and beyond. If they do not emphasize this meaning or build a system upon it, it is not to be blamed on them, since even among the Romans, such a sense was not used to determine the nature of the contract of loan, which revolved around money. Nor do modern scholars generally agree with the premise assumed by Endemann. Indeed, neither the Romans, nor the Scholastics, nor modern scholars in general, although they can and sometimes do call all possessions, and thus productive capital, "money," infer from this, as Endemann and some others do, that all goods and especially capital are money, or that all properties are found collected in money and formally inherent in it.

De pecunia autem ita materialiter intellecta, haec erat notio communior probata. Pecunia essentialiter est instrumentum ad res permutandas : ad hoc inventa est ac inservit; constituitur proinde mensura, pretium, regula omnium rerum, ipsas repraesentat, ab alia in aliam regionem, ab uno in aliud tempus (transferre), ita ut homini sit quasi de iussor. Et in hoc quidem munere consistit tantis pecuniae activus, id est usus pecuniae qua pecuniae. At omnino notandura pecuniae etiam inesse usum passivum, id est usum pecuniae qua mercis, cum monetae valor quidam inesset intrinsecus auri vel argenti, vi cuius cum rebus caeteris permutari posset, imo moneta unius metalli vel unius regionis cum moneta alterius metalli vel regionis. Quod si duplex hoc in pecuniae natura elementum prae oculis habeatur, nonnulla quae in systemate scolastico primo intuitu mira vel contradictoria apparent, apte explicari videntur. W. Endemann, qui totam litteraturam scolasticorum de re pecuniaria

Regarding money understood in this material sense, the commonly accepted notion was this: Money is essentially an instrument for exchanging goods; it was invented and serves this purpose. It is therefore constituted as a measure, price, and rule of all things, representing them, transferring from one region to another, from one time to another, so that it acts as a guarantor for people. And in this function lies the active use of money, that is, the use of money as money. However, it must be noted that money also has a passive use, that is, the use of money as a commodity, since the coin has an intrinsic value of gold or silver, by virtue of which it can be exchanged with other things, indeed, the coin of one metal or one region with the coin of another metal or region. If this dual element in the nature of money is kept in mind, some things that at first glance

docte inquisivit, consentiendo Conlzen, notat : « der Erste der auf die innere Natur des Geldes oingehet ist Thomas Ton Aqiino in seiner Schrift de regimine principis, c. 13, 14. Seine Ansichten, die sich wesentlich auf Aristoteles stützen, wurden für die kanonistische Schule von grosstem Einfluss, ja bildeten lange geradezu die Grundlage einer jeden Deduktion » (1). Sane, ante S. Thomaam, quaedam rariora occurrunt in Glossa ad Codicis juris civilis titulos de falsa moneta 9, 24 et de vet. numism. potestate, 11, 11; itemque in Corpore juris canonici (Decreti I P., Dist. LXXXVIII, c. 11 ejiciens, § 4 s.; Decretal. L. II, t. XXIV de jurejur., c. 18) (2). Post S. Thomara, usque ad finem Sebolae, ipsius notioni fundamentaliter adhaerebant p^{er}iti^{am} quamvis, saeculo XIV quaestione monetaria ex professo posita (1)^{am} notionis elementa magis declararentur et nonnumquam de ejusd^{em} applicationibus disputaretur. Theologi autem, ad quos per Medium aevum scientia oeconomica formaliter pertinebat (si^{cut} plerumque non nisi per accidens de pecuniae notione agebant, eam praesupponentes, verbi gratia, systemati de muluo et usura, vel eandem applicantes quibusdam, ut cambiorum, consuetudinibus. Quod idem dicendum est de omnibus qui saeculis XVI et XVII in Commentariis suis presse secuti sunt Scholae Principem. Unde imprimis accurate notio a S. Thoma statuta inquirenda videtur.

appear strange or contradictory in the scholastic system seem to be aptly explained. W. Endemann, who thoroughly investigated the entire literature of the scholastics on monetary matters, notes in agreement with Contzen: "The first to delve into the inner nature of money is Thomas Aquinas in his work 'De Regimine Principum,' chapters 13 and 14. His views, which are essentially based on Aristotle, were of the greatest influence on the canonistic school, indeed they long formed the very foundation of every deduction." Indeed, before St. Thomas, some rarer references occur in the Gloss on the titles of the Civil Code concerning counterfeit money (9, 24) and the power over old coins (11, 11); likewise in the Corpus Juris Canonici (Decretum I P., Dist. LXXXVIII, c. 11 ejiciens, § 4 s.; Decretals L. II, t. XXIV de jurejur., c. 18). After St. Thomas, until the end of the Scholastic period, scholars adhered to his fundamental notion, although in the 14th century, with the monetary question formally posed, the elements of the notion were more clearly explained and sometimes debated in their applications. Theologians, to whom economic science formally belonged during the Middle Ages, generally dealt with the notion of money only incidentally, presupposing it, for example, in the system of loans and usury, or applying it to certain customs, such as exchanges. The same must be said of all those who closely followed the Prince of the School in their commentaries in the 16th and 17th centuries. Therefore, the notion established by St. Thomas must be carefully examined first.

§ I. De ratione ac natura pecuniae juxta doctrinam S. Thomae Aquinatis, Doctrina S. Thomae de pecunia praesertim est

I. On the Reason and Nature of Money According to the Doctrine of St. Thomas Aquinas The doctrine of St. Thomas on

desumenda i^a ex locis illis ubi commentatorem in Aristotelem ex professo agit, scilicet In X Libros Ethicorum ad Nicomachum (Lib. V, lectio 9) et Politicorum seu de rebus civilibus (Lib. I, lectiones 6 ad 9); — 2^o ex locis ubi directe de mutuo et usura tractat, nempe in Quodlibet 111 (art. 19), in opusculo De Malo (q. XIII, art. 4), in Commento in tertium librum Sententiarum (Dist. XXXVII, q. I, art. 6), et in Summa theologica (2^a 2^a % LXXVIII), praetermittendo opusculura probabiliter spurium De usuris^a (opusc. 73 vel 76); — tandem et praecipue 3^a ex opusculo De regimine principum ad regem Cypri (Lib. II, cap. VII, XIII et XIV) ubi ex professo de re monetaria agit (3). A. De usu p^eeiiaia« actiTo. Porro ex locis illis constat pecuniam formaliter esse < regulam et mensuram rerum venalium » (i). Etenim ad venalia omnia id est, ad omnia quae hominum inter se commercio seu vitae oeconomicae commutationibus subsunt, non autem ad caetera, relationem importat pecunia. Nempe « quantitas rei quae in usum hominis venit, mensuratur secundum pretium datum; ad quod est inventum numisma, ut dicitur » (2). « Illa proprius usus pecuniae est ut expendatur pro commutatione aliarum rerum » (3). < Numisma continet omnia opera sicut ipsarum pretium » (4). Cum praecise omnia venalia, seu divitiae omnes pecunia commensurari possint, ideo frequentissime divitias omnes, ad exemplum Aristotei, juristarum romanorum, sanctorumque Patrum, « pecuniam » dicitur: < Dicendum quod, secundum Philosophum, omne illud pro pecunia habetur cujus pretium potest pecunia mensurari » (5). « Dicendum quod, sicut Augustinus dicit, totum quidquid homines in terra habent, et omnia quorum sunt domini, pecunia vocatur » (6). « Omnes res exteriores, quae veniunt in usum humanae vitae, nomine pecuniae intelliguntur, in quantum habent rationem boni utilis » (7).

money is primarily derived from the places where he explicitly comments on Aristotle, namely in the “Nicomachean Ethics” (Book V, Lecture 9) and the “Politics” or “On Civil Matters” (Book I, Lectures 6 to 9); secondly, from the places where he directly deals with loans and usury, namely in “Quodlibet III” (Article 19), in the treatise “De Malo” (Question XIII, Article 4), in the commentary on the third book of the “Sentences” (Distinction XXXVII, Question I, Article 6), and in the “Summa Theologica” (Second Part of the Second Part, Question LXXVIII), excluding the probably spurious treatise “De Usuris” (Treatise 73 or 76); and finally and especially from the treatise “De Regimine Principum” to the King of Cyprus (Book II, Chapters VII, XIII, and XIV), where he explicitly deals with monetary matters. A. On the Active Use of Money From these places, it is clear that money is formally “the rule and measure of saleable things.” Indeed, money relates to all saleable things, that is, to all things subject to human commerce or economic exchanges, but not to other things. “The quantity of a thing that comes into human use is measured according to the given price; for which money was invented, as it is said.” “Thus, the proper use of money is to be spent in exchange for other things.” “Money contains all works as their price.” Since all saleable things, or all wealth, can be measured by money, wealth is very often called “money,” following the example of Aristotle, Roman jurists, and the Holy Fathers: “It must be said that, according to the Philosopher, everything that is considered money is that whose price can be measured by money.” “It must be said that, as Augustine says, everything that men have on earth, and all things of which they are masters, is called

money.” “All external things that come into human use are understood by the name of money, insofar as they have the nature of a useful good.”

Unde pecunia non mensurantur illa bona quae commutationibus subesse nequeunt, ut c benevolentia, quae sub aestimationem pecuniae non cadit » (i), vel ut « res spiritualis » quae « non potest aliquo pretio terreno compensari » (2), vel tandem, quod praesenim notandum, pecunia non mensurari potest tempm qua tale : et hoc quidem S. Thomas applicat suis theoriis de dominio privato rerum externarum (3), de emptione-venditione (4), ac de mutuo et usura (5); idemque explicite docet in opusculo De emptione et venditione ad tempus (6). Quodsi igitur pecunia ex institutione sua ad rerum commutationem ordinetur, seu ad omnia bona utilia relationem importet, inquirendum praesertim est qualis sit illa relatio. Atqui imprimis, Aristotelis doctrinam explicans, S. Thomas excludit sententiam, quam apud nonnullos recentiores invenimus (7), quaeque rationem divitiarum, sive, juxta modernara terminologiam, capitalis naturam in pecuniam ideo transfert, quia divitiae omnes pecunia raensurantur. Quae, utpote perspicua, heic transcribere juvabit : « Posset aliquis dubitare, utnira sint omnino idem pecuniae et divitiae. Ponit (Philosophus) contrariam opinionem; dicens quod aliquando videtur fatuitas quaedam dicere quod nihil eorum quae sunt secundum naturam sint divitiae, puta triticum et vinum et alia hujusmodi : et quod totae divitiae sint denarii introduci per legem. Et ad hoc introducitur duas rationes : quarum prima est, quia non sunt verae divitiae illae quae variaia hominum dispositione, nuUam dignitatem neque utilitatem habent ad necessitatem vitae : sed transmutata dispositione hominum qui utuntur divitiis, denarii nullius sunt pretii^ nec aliquid aferunt ad necessitatem vitae; puta si placeat regi vel communitati ut non valeant. Ergo stultum est

Therefore, money does not measure those goods that cannot be subject to exchange, such as “benevolence, which does not fall under the estimation of money,” or “spiritual things,” which “cannot be compensated by any earthly price,” or finally, and most notably, time itself cannot be measured by money. St. Thomas applies this to his theories on private ownership of external things, on buying and selling, and on loans and usury; he also explicitly teaches this in his treatise “On Buying and Selling at a Fixed Time.” If money, by its institution, is ordered towards the exchange of things, or relates to all useful goods, it is especially necessary to inquire what kind of relation this is. First of all, explaining Aristotle’s doctrine, St. Thomas excludes the opinion found among some modern scholars, which transforms the nature of wealth, or, according to modern terminology, the nature of capital, into money because all wealth is measured by money. This is clear and worth transcribing here: “One might doubt whether money and wealth are entirely the same. The Philosopher presents the contrary opinion, saying that it sometimes seems foolish to say that nothing according to nature is wealth, such as wheat and wine and other such things, and that all wealth is money introduced by law. And he introduces two reasons for this: the first is that those things which, by the changing disposition of men, have no dignity or utility for the necessities of life are not true wealth; but with the changing disposition of men who use wealth, money is of no value and brings nothing

dicere quod divitiae totaliter nihil sint nisi multitudo pecuniarum. Secundam rationem ponit... quae talis est : Inconveniens est dicere quod ille qui est dives[^] indigeat cibo vel pereat fame : sed multoties potest contingere quod homo abundans in denariis egeat cibo et pereat fame, sicut dicitur fabulose de quodam Mida nooīne...: ergo denarii non sunt verae divitiae » (i). Qui locus non ita interpretandus est quasi pecunia nuUatenus ad divitias seu ad bona homini utilia pertineret : etenim tum Aristoteles tum S. Thomas omnino con6rmant pecunia divitias mensurari, ideoque pecuniae pretio divitias omnes posse acquiri ; unde non mirandum est Aquinatem alibi scribere : c pecunia autem cadit sub ratione bonorum utilium, quia omnia exteriora bona ad usum hominis sunt ordinata » (2); cadit sub ratione bonorum utilium ea ratione qua homini utiis est, nempe quatenus instrumentum constitui* tur commutationum, non autem quatenus in ipsam divitiarum essentia transfertur. Insuper idem plene constat ipsiu[^] de usura theoria, quae in hoc fundamento nititur, omnem pecuniae qua pecuniae usum commutationis distractione absolvi.

to the necessities of life; for example, if it pleases the king or the community that it should not be valid. Therefore, it is foolish to say that wealth is entirely nothing but a multitude of coins. The second reason he presents is this: It is absurd to say that a rich man should lack food or perish from hunger; but it often happens that a man abundant in money lacks food and perishes from hunger, as is fabulously said of a certain Midas by name...: therefore, money is not true wealth.” This passage is not to be interpreted as if money in no way pertains to wealth or useful goods for man: for both Aristotle and St. Thomas fully confirm that wealth is measured by money, and therefore all wealth can be acquired by the price of money; hence it is not surprising that Aquinas writes elsewhere: “Money falls under the category of useful goods, because all external goods are ordered to the use of man”; it falls under the category of useful goods insofar as it is useful to man, namely as an instrument of exchange, but not insofar as it is transferred into the very essence of wealth. This is also fully confirmed by his theory of usury, which is based on the principle that every use of money as money is resolved by the exchange of goods.

Cum igitur pecunia ad venalia divitiasque omnes referatur[^] cuin autem non ita refratur ut earumdem ratione induatiir, quaisnam formaliter relatto concipitur ab Angelico? Pecuma e[^] mensura omnium rerum venalium : est mensura, non tamen quasi in seipsa utilitatem aliquam ejusdem generis ac res venales contineret, quod jam modo excludimus, nec quasi quamlibet aliam in seipsa naturalem utilitatem haberet quae utiitas aequivaleret utilitati rerum homini necessariarum, et qiaae ideo hanc mensurare posset : etenim « omnes aliae res ex seipsis

Since money relates to all saleable goods and wealth, but not in such a way that it assumes their nature, what formal relation is conceived by the Angelic Doctor? Money is the measure of all saleable things: it is a measure, but not as if it contained any utility of the same kind as saleable things, which we have just excluded, nor as if it had any other natural utility in itself that would be equivalent to the utility of things necessary for man, and which could therefore measure this utility. “All other

habent aliquam utilitatem, pecunia autem non, sed est mensura utilitatis aliarum rerum, ut patet per Philosophum in V Ethic, cap. Vlii. Et ideo pecuniae usus non habet mensuram Utilitatis ex ipsa pecunia, sed ex rebus quae per pecuniam mensurantur secundum differentiam ejus qui pecuniam ad res transmutat » (i) .. < Oportet esse unum aliquid quo hujusmodi omnia mensurantur quod quidem non mensurat ex sui natura, sed quia ita positum est inter homines » (?). Unde qua principium fundamentale ponit pecuniam, qua pecuniam, esse mensuram non mensuratam : quod quidem maximi est momenti ad doctrinam oeconomicam S. Thomae rite intelligendam. Nempe pecunia formaliter habetur ab ipso ejusdem naturae ac pondus et mensura, quorum usus essentialis est in ponderando ac mensurando, et quorum ideo intrinseca utilitas, quam ex sua natura habent, nullatenus refert. Quod omnibus S. Thomae dictis probare supervacaneum esset; sufficitque ejus opera legisse ut ita statuatur. Hoc autem dicendo, nullatenus id negare intendimus, quod Angelicus affirmat : « amplius autem pondus et mensura, in quantum talia, semper ordinantur ad mensurata et ponderata; aliter per se nihil sunt. Sed numisma, quamvis sit mensura et instrumentum in permutationibus, tamen per se aliquid esse potest; puta, si conflatur, erit aliquid, videlicet aurum vel argentum. Ergo semper non ordinabitur ad permutationes » (3). Sed sub hoc respectu, ut mox dicitur, numisma non jam ut pecunia habendum est. Insuper « venim est, quod etiam denarius patitur hoc idem quod aliae res, quod scilicet non aemper pro eo accipit homo quod vult, quia non semper postea aequale, idest non semper est ejusdem valoris; sed tamen debet esse institutus, ut magis permaneat in eodem valore < aliae res » (i). Et ita dicendum est pecuniam, etiamsi pecunia maneat, mensurari, adeoque valorem in se quemdam habere. Sed, nedum mensuretur quia pecunia, potius mensuratur quam sit

things have some utility in themselves, but money does not; it is the measure of the utility of other things, as the Philosopher shows in the fifth book of the Ethics, chapter eight. Therefore, the use of money does not have a measure of utility from the money itself, but from the things that are measured by money according to the difference of the one who exchanges money for things.” “There must be one thing by which all such things are measured, which indeed does not measure by its own nature, but because it is so established among men.” Hence, he posits as a fundamental principle that money, as money, is a measure, not measured: which is of the utmost importance for rightly understanding the economic doctrine of St. Thomas. Namely, money is formally considered by him to be of the same nature as weight and measure, whose essential use is in weighing and measuring, and whose intrinsic utility, which they have by their nature, is of no relevance. It would be superfluous to prove this with all the sayings of St. Thomas; it suffices to have read his works to establish this. In saying this, we do not intend to deny what the Angelic Doctor affirms: “Moreover, weight and measure, as such, are always ordered to the things measured and weighed; otherwise, they are nothing in themselves. But money, although it is a measure and instrument in exchanges, can still be something in itself; for example, if it is melted down, it will be something, namely gold or silver. Therefore, it will not always be ordered to exchanges.” But in this respect, as will be said shortly, money is no longer to be considered as money. Moreover, “it is true that even money suffers the same as other things, namely that a man does not always get what he wants for it, because it is not always of equal value

pecunia, et quia secum aliud quid quam mensuram portat. Unde tandem concludimus, juxta S. Thomam per se formaliter esse tantummodo mensuram, id est utilitatem pecuniae seu usum totum in mensurando consistere, quoniam pecunia mensuretur.

afterwards; but it should be so instituted that it remains more constant in value than other things." And so it must be said that money, even if it remains money, is measured, and therefore has some value in itself. But it is not measured because it is money, rather it is measured as something other than a measure. Hence, we conclude, according to St. Thomas, that money is formally only a measure, that is, the entire utility of money or its use consists in measuring, without money itself being measured.

Quoties proinde mensurat, quin mensuretur, quonam sensu Terum mensura positive dicenda est? Ideo omnium venalium - consuetum mensura, non quia omnium valorem suo ipsius comparat valori, sed quia instrumentum est quo res secundum valorem comparantur ac mensurantur unam ad aliam. Quod hodierna terminologia diceretur, pecuniam ideo esse omnium mensuram quia est formaliter signum valorum repraesentativum. Ideoque praecise < denarius non est mensura per naturam, sed nomo, id est a lege : est enim in potestate natura transmutare denarios et reddere eos inutiles Numisma factum est secundum compositionem, id est secundum conventionem quamdam inter homines... : est enim conductum inter homines quod afferenti denarium detur id quo indiget. Non mensurat ex sua natura, sed quia ita positum est inter homines » (t). Ponitur autem inter homines et ab ipsis ut « mensura quaedam, per quam superabundantia et defectus reducuntur ad medium, ut Philosophus in VII^o ethic. dicit » (3). Ad quae intelligenda, conferantur quae citato Philosophi loco annotat. « Dicit ergo primo quod ad hoc quod opera diversorum artificum adaequantur, et sic commutari possint, oportet, quod omnia illa quorum potest esse commutatio, sint aequaliter ad invicem comparabilia, ut scilicet sciatur quid eorum plus valeat, et quid minus. Et ad

If money measures without being measured, in what sense is it positively called a measure of things? It is constituted as the measure of all saleable things, not because it compares the value of all things to its own value, but because it is the instrument by which things are compared and measured according to value, one to another. In today's terminology, money is the measure of all things because it is formally a representative sign of values. Therefore, precisely "a coin is not a measure by nature, but by law: it is in the power of nature to change coins and render them useless. A coin is made according to composition, that is, according to a certain agreement among men...: it is agreed among men that whoever brings a coin will be given what they need. It does not measure by its own nature, but because it is so established among men." It is established among men and by them as "a certain measure, by which excess and deficiency are reduced to a mean, as the Philosopher says in the fifth book of the Ethics." To understand this, one should refer to what the Philosopher notes in the cited passage: "He says first that in order for the works of different craftsmen to be equalized, and thus be

hoc inventa est moneta idest denarius, per quam mensurantur pretia talium rerum. Et sic denarius fit quoddam medium, in quantum scilicet omnia men.surat, et superabundantiam et defectum, in quantum una res superexcedit aliam » (i), Et quidem comparationem rerum ad invicem per medium monetae adstruit saepissime Angelicus : quod idem concinne exprimere solet : « numisma omnia facit commensurata in quantum omnia mensurantur numismate » {?}, nullatenus autem in quantum omnia commensurantur numismati. < Numisma adaequat res commutabiles, sicut quaedam mensura fadens res commensuratas, Manifestat (Philosophus) quomodo secundum mensurationem denariorum sit commutatio rerum. quae denariis commensurantur » (3). Equid^m non intelligeretur quomodo S. Thomas ex professo rerum et denariorum commensationem excluderet, ac tantacuracommensationem ipsarum rerum per denarios inculcaret, nisi poneret per pecuniam rerum ad invicem valorem comparari, non autem directe ad intrinsecum valorem pecuniae. Hucusque Angelici doctrina, si accurate inspicitur, plene[^] cum notione pecuniae, quam supra statuimus, et a moderni & multis audivimus, congruit, quamvis alio et quidem profundiore sermone proferatur. Hoc autem posito, logice deducit assertum quod theoriae scolasticae de usura est fundamento : « proprius[^] et principalis pecuniae usus est ipsius consumptio, sive distractio secundum quod in commutationes expenditur » (4). Logice deducit : si enim propria pecuniae formalitas in hoc absolvitur quod rerum commutandarum sit mensura, proprius pecuniae usus est in hoc quod res commutandas de facto mensuret; atqui patet eam de facto non mensurare, nisi pecunia, accepta ex commutatione cum re una, commutetur cum alia.

exchangeable, it is necessary that all those things that can be exchanged are somehow comparable to each other, so that it is known what is worth more and what is worth less. And for this, money was invented, that is, a coin, by which the prices of such things are measured. And thus a coin becomes a kind of mean, inasmuch as it measures all things, both excess and deficiency, inasmuch as one thing exceeds another." Indeed, the Angelic Doctor often asserts the comparison of things to each other through the medium of money: which he also expresses concisely: "Money makes all things commensurate inasmuch as all things are measured by money," but not inasmuch as all things are commensurate to money. "Money equalizes exchangeable things, like a certain measure making things commensurate. The Philosopher explains how, according to the measurement of coins, there is an exchange of things that are measured by coins." Indeed, it would not be understood how St. Thomas explicitly excludes the commensuration of things and coins, and yet emphasizes the commensuration of things themselves by coins, unless he posits that the value of things is compared to each other through money, but not directly to the intrinsic value of money. Thus far, the doctrine of the Angelic Doctor, if carefully examined, fully agrees with the notion of money we established above and heard from many moderns, although it is expressed in a different and indeed deeper language. This being established, he logically deduces the assertion that is the foundation of the scholastic theory of usury: "The proper and principal use of money is its consumption, or expenditure, as it is spent in exchanges." He logically deduces: if the proper formality of

money is resolved in being the measure of things to be exchanged, the proper use of money is in fact measuring the things to be exchanged; but it is clear that it does not measure in fact unless money, received from an exchange with one thing, is exchanged for another.

Ex omnibus dictis constat evidenter quonam sensu pecunia, juxta S. Thomae sententiam, commutatione consumatur > seu < distrabatur » seu « expendatur > : quae consumptio non ita est intelligenda quasi res, quae pecunia est, nempe aurum vel argentum, quando pecunia utuntur, consumeretur (i), nec praesertim ita quasi res» quae pecunia mensuratur seu repraesentatur, consumeretur, id est ab homine ad vivendum absumeretur. De re quae pecunia est, loquendo de pecunia qua pecunia, non curat Angelicus; nec magis curat de tisu rei, quae pecunia repraesentatur, cum loquitur de usu pecuniae (2); sed curat tantum de pecunia qua mensura rerum. Atqui, qua mensura, pecunia distrahitur, consumitur ac expenditur, quando cum re commutatur. seu quando rem prelio mensurat : pecunia tua est mensura libri; cum autem uteris hac mensura s^u hoc signo librum tibi pretio repraesentante, expendis pecuniam, distrahis eam ac consumis qua signum ac libri mensuram : siquidem ipse libri signi et mensurae loco succedit. Quod si dicas pecuniam in manibus venditoris adhuc signura ac pretium libri tui haberi, juxta principia exposita venim sane dicis; at si venditor mensura hac utitur, eodem modo ipsi distrahitur ac consumitur. Quae si nimis aperta videantur quare ut adstrui debeant, ipsis nihilominus potissimum insistendum est, quippe quae altioribus de pecunia principiis cohaereant, et theorias maximi momenti secum trahant. Unde manifeste errant qui S. Thomae et scolasticorum doctrinam de pecuniae usu, qui est in pecuniae consumptione, ita explicant quasi pecunia tunc de facto plerumque rebus

From all that has been said, it is evident in what sense money, according to St. Thomas's opinion, is "consumed" or "expended" in exchange: this consumption is not to be understood as if the thing that is money, namely gold or silver, is consumed when money is used, nor especially as if the thing measured or represented by money is consumed, that is, used up by man for living. When speaking of money as money, the Angelic Doctor does not care about the thing that is money; nor does he care about the use of the thing represented by money when he speaks of the use of money; he only cares about money as a measure of things. As a measure, money is expended, consumed, and used up when it is exchanged for a thing, or when it measures the price of a thing: your money is the measure of the book; when you use this measure or this sign representing the price of the book for you, you expend the money, you use it up and consume it as a sign and measure of the book: the book itself takes the place of the sign and measure. If you say that the money in the seller's hands is still the sign and price of your book, you are indeed correct according to the principles explained; but if the seller uses this measure, it is expended and consumed in the same way. If these points seem too obvious to need stating, they must nevertheless be insisted upon, as they are connected with higher principles about money and carry theories of great

commutaretur, quae ab hominibus ut necessaria ad vitam consumerentur : unde distinguendum esset inter mutuum consimptionis quo pecunia ad sustentationem vitae tribuatur, et mutuum productionis quo ad res producendas seu ad lucrum faciendum credatur. Non intendimus hanc sententiam hanc in seipsa dijudicare, verum tantummodo per transennam notare tali modo huiusmodi doctrinam S. Thomae rite explicari. Ubi nam tale quid in operibus Divi Doctoris invenitur? . Ut naturam usumque pecuniae qua pecuniae describat, apertissime abstrahit a natura et usu rei cuius pecunia constituitur pretium et raensura. Quod si de facto, certo tempore ac loco, pecunia uteretur ad necessaria vitae obtinenda, hoc ad ipsa principia, quibus juxta Angelicam vitam regitur oeconomica, nullomodo pertinet (i). Nec allegantur dicta ipsius in commentario ad V Ethicorum : « circa quod considerandum est quod si semper homines in praesenti indigerent rebus quas invicem habent, non deberet fieri commutationem nisi rei ad rem, puta frumenti ad vinum : sed quandoque contingit quod ille cui superabundat vinum ad praesens non indiget frumento quod habet ille qui indiget vino, sed forte postea indigebit vel aliqua alia re. Sic ergo pro necessitate futurae commutationis numisma, id est denarius, est nobis quasi fidejussor quod si in praesenti homo nullo indiget, sed indigeat in futuro, aderit sibi afferenti denarium illud quo indigebit. Oportet enim esse istam virtutem denarii, ut quando aliquis ipsum affert, statim contingat accipere illud quo homo indiget » (i). Hoc exemplum rerum necessariorum Aristoteles sequens, « manifestat quomodo denarius mensuret »; et infra iterum ostendens « per quem modum denarii raensurent » scribit : « numisma... omnia facit commensurata in quantum omnia raensurantur numismae », et deinde ad necessitatem nullam respiciens : « sit A domus quae valet quinque libras : B sit lectus qui valeat unam libram : et sic lectus erit in

importance. Therefore, those who explain St. Thomas's and the scholastics' doctrine on the use of money, which is in the consumption of money, as if money were then in fact mostly exchanged for things that are consumed by men as necessary for life, are clearly mistaken: hence, they would need to distinguish between a loan for consumption, where money is given for the sustenance of life, and a loan for production, where it is lent for producing things or making a profit. We do not intend to judge this opinion in itself here, but merely to note in passing that such an explanation does not correctly interpret St. Thomas's doctrine. Where is such a thing found in the works of the Angelic Doctor? To describe the nature and use of money as money, he clearly abstracts from the nature and use of the thing whose price and measure money constitutes. If, in fact, at a certain time and place, money was used to obtain the necessities of life, this in no way pertains to the very principles by which, according to the Angelic Doctor, economic life was governed. Nor should his statements in the commentary on the fifth book of the Ethics be cited: "It should be considered that if men always needed the things they have from each other at present, there would be no need for exchange except of thing for thing, such as wheat for wine: but sometimes it happens that he who has an abundance of wine does not need the wheat that he who needs wine has at present, but perhaps will need it later or some other thing. Therefore, for the necessity of future exchange, money, that is, a coin, is for us like a guarantor that if a man does not need anything at present, but will need it in the future, he will have what he needs when he brings the coin. For it is necessary for the coin to have this

vaioire quinta pars domus. Unde manifestum est quot lecti sint aequales in valore uni domui, scilicet quinque. Et manifestum est quod sic fiebat commutatio antequam essent denarii : dabantur enim quinque lecti pro una domo. Nihil autem differt utrum dentur quinque vel quantum valent quinque » (2).

virtue, that when someone brings it, he immediately gets what he needs.” Following Aristotle, he uses this example of necessary things to “show how the coin measures”; and later, showing again “how coins measure,” he writes: “Money... makes all things commensurate inasmuch as all things are measured by money,” and then, without referring to necessity: “Let A be a house worth five pounds: let B be a bed worth one pound: and thus the bed will be worth one-fifth of the house. Hence, it is clear how many beds are equal in value to one house, namely five. And it is clear that this was how exchange was made before there was money: for five beds were given for one house. It makes no difference whether five are given or what is worth five.”

Quod si caeteroquin admitteret S. Thomas homines pecunia non nisi ad res ipsas immediate necessarias acquirendas uti posse, hoc haberetur ex principio aliquo altiori legis moralis, non autem, ut dictis patet ex ratione pecuniae (i). Nec verum: est admittere S. Doctorem, homines pecunia uti non posse ad res non necessarias, id est ad lucrum faciendum : etenim postquam locutus est de negotiantibus ad res necessarias, addit : < nihil prohibet lucrum ordinari ad aliquem finem necessarium vel etiam honestum;... sicut... cum aliquis negotiationi intendit propter publicam utilitatem, ne scilicet res necessariae ad vitam patriae desint; et lucrum expetit, non quasi finem. sed quasi stipendium laboris » (2). Hoc sane modo probatur omne commercium industriaeque omnis, dummodo legibus moralibus altioribus regantur.

If, moreover, St. Thomas admitted that men could use money only to acquire things immediately necessary for them, this would be based on some higher principle of moral law, not, as is clear from the reasoning about money, on the nature of money itself. Nor is it true to admit that the Angelic Doctor holds that men cannot use money for things that are not necessary, that is, for making a profit: for after discussing trade for necessary things, he adds: “Nothing prohibits profit from being directed to some necessary or even honorable end;... as when someone engages in trade for the public good, so that necessary things for the life of the country are not lacking; and seeks profit, not as an end, but as a reward for labor.” In this way, all commerce and industry are indeed justified, provided they are regulated by higher moral laws.

Quibus per transennam dictis, ad notionem pecuniae redeamus. Praeter usum principalem, qui est distractio pecuniae in

Returning to the notion of money, besides its principal use, which is “the expenditure of money in exchanges,”

commutationes », « potest esse aliquis secundarius usus pecuniae argenteae (i), ut puta si quis concederet pecuniam signatam ad ostentationem vel ad ponendum loco pignoris » (2). Inquirendum modo est quomodo hunc usum secundarium intelligat S. Thomas? « Dicendum, ita ipse in opusculo De Malo, quod sicut Philosophus dicit, duplex usus potest esse alicujus rei : unus proprius et principalis : alius secundarius et communis : sicut calceamenti proprius et principalis usus est calceatio, secundarius autem commutatio. Pecuniae autem e converso principalis usus est commutatio; propter hanc enim pecunia facta est : secundarius autem usus pecuniae potest esse quicumque alius, puta... si quis pecuniam signatam in sacculo -concedat alicui ad hoc quod ponat eam in pignore..., si quis concedat alteri pecuniam ad usum ostentationis... » (3). Quem duplicem usum, in quavis re admissum, accuratius in commentario ad I Librum Politicorum (4) descripsit, et exemplo citato calceamenti explicavit. Cui loco S. Thomae praesertim •est annotandum utrumque usum, tam principalem, quam secundarium, esse usum rei qua talis, cum ipse Angelicus, Aristotelem sequendo, hunc usus characterem in luce ponat : etenim * conveniunt in hoc quod uterque est secundum se et non per accidens... Quamvis commutatio non sit proprius usus calceamenti, est tamen usus ejus per se et non secundum accidens : quia ille qui commutat ipsum, utitur eo secundum valorem suum. » Ergo usus calceamenti ad commutationem, quamvis sit secundarius, tamen usus est ipsius secundum naturam et valorem calceamentiet non tantum secundum valorem rei coriaceae; simili modo, aliquis usus pecuniae praeter commutationem, quamvis sit secundarius, tamen potest esse usus pecuniae secundum rationem pecuniae, et non solum secundum rationem metalli (5). Quod idem patet ex notione usus principalis : etenim praecise quia> hominibus est quasi fidejussor, utpote omnium rerum pretium exhibens, ideo concedi potest « ad

there can be a secondary use of coined money, such as if someone were to lend coined money for display or to be used as a pledge. We must now inquire how St. Thomas understands this secondary use. "It must be said, as he himself states in the treatise 'De Malo,' that as the Philosopher says, there can be a twofold use of any thing: one proper and principal, the other secondary and common. Just as the proper and principal use of a shoe is to wear it, the secondary use is to exchange it. Conversely, the principal use of money is exchange; for this reason, money was made: the secondary use of money can be any other, such as if someone lends coined money in a bag to be used as a pledge, or if someone lends money for display." He described this twofold use, admissible in any thing, more accurately in his commentary on the first book of the "Politics," and explained it with the example of a shoe. In this passage of St. Thomas, it is especially noteworthy that both the principal and secondary uses are uses of the thing as such, as the Angelic Doctor, following Aristotle, highlights this characteristic of use: "They agree in this, that each is in itself and not by accident... Although exchange is not the proper use of a shoe, it is nevertheless its use in itself and not by accident: because he who exchanges it uses it according to its value." Therefore, the use of a shoe for exchange, although secondary, is still its use according to the nature and value of the shoe and not only according to the value of the leather; similarly, any use of money besides exchange, although secondary, can still be the use of money according to the nature of money, and not only according to the nature of the metal. This is also evident from the notion of principal use: precisely because it is a guarantor for men, as it

ponendum loco pignoris »; unde sub formalitate qua pecunia utuntur principaliter, sub eadem uti possunt secundo, nempe sub formalitate qua mensura et signum rerum repraesentativum constituitur. Quod autem, juxta doctrinam S. Thomae, usus secundarius pecuniae per se sit vendibilis, usus vero primarius nullomodo (i), non ponit contradictionem, contra ex eadem notione defluit: nempe quia pecunia tua formaliter mensura est ac pretium, si cum re aliqua commutatur, tibi consumitur ac distrahitur qua mensura ac pretium; et e converso, quia pecunia formaliter mensura est ac pretium, si ad ostensionem vel pignus conceditur, tibi manet qua mensura ac pretium: unde hic quaeri posset utrum qua talis contractui oneroso subesse possit; de hac autem quaestione nondum agitur. Ex hucusque positis, constat pecuniae, formaliter qua talis, rationem hoc absolvi, quod omnium venalium pretium seu mensuram constituat; omnia nempe mensurari pecunia, quae caeteris rebus non mensuretur ipsa; unde pecuniam qua talem utilitatem quidem praeditam esse mensurandi seu commutandi, nulla vero alia utilitate quam ex seipsa, sicut caeterae res, habere; unde ulterius alios pecuniae qua talis praeter commutationis usus quoscunque veros esse ac legitimos, quamvis principali subordinatos et secundarios.

presents the price of all things, it can therefore be lent “to be used as a pledge”; hence, under the formality by which money is principally used, it can also be used secondarily, namely under the formality by which it is constituted as a measure and representative sign of things. However, according to the doctrine of St. Thomas, the secondary use of money is per se saleable, while the primary use is not, which does not pose a contradiction but rather follows from the same notion: namely, because your money is formally a measure and price, if it is exchanged for something, it is consumed and expended for you as a measure and price; conversely, because money is formally a measure and price, if it is lent for display or as a pledge, it remains for you as a measure and price: hence, it could be questioned whether it can be subject to a burdensome contract as such; but this question is not yet addressed. From what has been stated so far, it is clear that the notion of money, formally as such, is resolved in this, that it constitutes the price or measure of all saleable things; all things are measured by money, which itself is not measured by other things; hence, money as such is endowed with the utility of measuring or exchanging, but has no other utility than from itself, like other things; hence, further, any other uses of money as such besides exchange are true and legitimate, although subordinate and secondary to the principal use.

9. Be usu pecuniae passivo. Et nihilominus, ut a Divo Doctore audivimus, <quamvis mensura et instrumentum in permutationibus, tamen per se aliquid esse potest> (2). Et ita ad alterum pecuniae characterem inquirendum pervenimus, quo caractere pecunia constituatur res^a adeoque eadem ac caetera venalia ratione induatur. Ab

9. On the Passive Use of Money And yet, as we have heard from the Divine Doctor, “although it is a measure and instrument in exchanges, it can still be something in itself.” Thus, we come to inquire about another characteristic of money, by which money is constituted as a thing, and thus assumes the same

initio notemus oppositionem, quam S. Thomas ponit inter pecuniam quatenus mensura est, et pecuniam quatenus est aliquid : qua oppositione iterum confirmatur notio formalis pecuniae, quam Angelicus adstruere nobis videtur. «Per se aliquid esse potest; puta si conflatur, erit aliquid, videlicet aurum vel argentum. Ergo semper non ordinabitur ad permutationes ii (t). Scilicet juxta supra dicta, cum pecunia ut mensura rerum habetur, non consideratur ut utilitatem habens ex se, nisi utilitatem mensurae; cum autem pecunia ut aliquid ex se utile habetur, non consideratur ut rerum mensura, nec ad permutationes ordinatur. Quod idem alibi expressius dicitur : « et ideo ad hujusmodi commutationes in remotis (regionibus) faciendas ordinaverunt quod aliquid sibi invicem darent et acciperent, quod de facili et expedite portari posset, et tamen de se haberet aliquam utilitatem : et hujusmodi sunt metalla, puta aes, ferrum et argentum et alia hujusmodi : haec enim sunt secundum se utilia in quantum ex eis fiunt vasa vel aliqua instrumenta » (2).

nature as other saleable goods. From the beginning, let us note the opposition that St. Thomas places between money as a measure and money as something: this opposition again confirms the formal notion of money that the Angelic Doctor seems to be establishing for us. "It can still be something in itself; for example, if it is melted down, it will be something, namely gold or silver. Therefore, it will not always be ordered to exchanges." That is, according to what has been said above, when money is considered as a measure of things, it is not considered as having utility in itself, except the utility of a measure; but when money is considered as something useful in itself, it is not considered as a measure of things, nor is it ordered to exchanges. This is expressed more clearly elsewhere: "And therefore, for making such exchanges in remote regions, they arranged to give and receive something that could be easily and quickly carried, and yet had some utility in itself: and such are metals, such as bronze, iron, and silver, and other such things: for these are useful in themselves inasmuch as vessels or some instruments are made from them."

Inde uerius patet pecuniam, quamvis non sit mensura quatenus merx seu res venalis, tamen ut mensuram electam esse quia est merx. Et quidem « primo fuit determinatum metallum solo pondere et magnitudine, sicut apud quasdam gentes habentur formae argenti non monetati; sed postea ut homines liberarentur a necessitate mensurandi vel ponderandi impresserunt aliquem characterem quod ponitur in signum quod metallum sit laetae quantitatis; sicut etiam in aliquibus locis iraponuntur quaedam signa publica ad mensuram vini vel frumenti » (3). Insuper, quamvis sit mensura, tamen quia est simul merx, pecunia non plene caeteris

It further becomes clear that money, although it is not a measure insofar as it is a commodity or saleable item, is chosen as a measure because it is a commodity. Indeed, "initially, metal was determined solely by weight and size, as among certain peoples there are forms of uncoined silver; but later, to free people from the necessity of measuring or weighing, they impressed a character that serves as a sign that the metal is of a certain quantity; just as in some places, certain public signs are imposed for the measurement of wine or grain." Moreover, although it is a measure,

mensuris immutabilibus aequatur; et ideo S. Thomas, cum «manifestat quomodo denarius mensuret» (4), restrictionem addere debet dicens: «verum est autem quod etiam denarius patitur hoc idem quod aliae res, quod scilicet non semper pro eo accipit homo quod vult, quia non semper postea aequale, idest non semper est ejusdem valoris; sed tamen taliter debet esse institutus ut magis permaneat in eodem valore, quam aliae res.» Et tamen, quamvis ideo mensura sit quod ipsa possit ut res venalis haberi, non mensura est quatenus res venalis habetur. Quod jam patet ex iis quae statuimus supra, scilicet pecuniam mensuram esse quatenus unam rem venalem alteri, nec sibi, pretio conferat. Quod insuper patet ex loco, ubi S. Thomas ostendit <qualiter in quolibet regno et quocumque dominio necessarium sit numisma proprium» (i). Nam «numisma proprium fructuosius est. Cum enim extraneae monetae communicantur in permutationibus, oportet recurrere ad artem campariam; cum talia numismata non tantum valeant in regionibus extraneis quantum in propriis (2): et hoc sine damno esse non potest. Et praecipue accidit in partibus Theuloniae et regionibus circumstantibus, propter quod cotinotur cum de loco ad locum transeunt, massam auri vel argenti secum deferre, et quantum in «commutationibus rerum venalium indigent, tantum vendunt.» -Quodsi numisma, qua mensura, formaliter ut merx, id est, ut aurum vel argentum haberetur, sane tanti valeret in una regione quanti in alia, nec intelligeretur quonam modo argenti vel aurum monetatum regioni proprium «fructuosius» esset. Etenim in hypothesis data, commutando numismata aurea extranea cum auro proprio, patet habendam esse aequivalentiam: nec dicendum laborem commutantium extraneorum esse remunerandum,tribuendo majus pondus auri quam numismatum; nam expensae industriae illorum compensari possunt expensis parallelis laboris eorum qui e regione, ubi nonnisi metallum auri

because it is also a commodity, money is not fully equated with other immutable measures; and therefore, St. Thomas, when “explaining how a coin measures,” must add a restriction, saying: “It is true, however, that even a coin suffers the same as other things, namely that a man does not always get what he wants for it, because it is not always of equal value afterwards; but it should be so instituted that it remains more constant in value than other things.” And yet, although it is a measure because it can be considered as a saleable item, it is not a measure insofar as it is considered a saleable item. This is already clear from what we have established above, namely that money is a measure insofar as it compares the price of one saleable item to another, not to itself. This is further evident from the passage where St. Thomas shows “how in every kingdom and every domain it is necessary to have its own coin.” For “a proper coin is more fruitful. When foreign coins are used in exchanges, it is necessary to resort to the art of money-changing; since such coins are not worth as much in foreign regions as in their own: and this cannot be without loss. And this especially happens in parts of Germany and the surrounding regions, wherefore, when they move from place to place, they carry a mass of gold or silver with them, and sell as much as they need in exchanges of saleable items.” If a coin, as a measure, were formally considered as a commodity, that is, as gold or silver, it would indeed be worth as much in one region as in another, and it would not be understood how coined gold or silver proper to a region would be “more fruitful.” Indeed, in the given hypothesis, by exchanging foreign gold coins with local gold, equivalence must be maintained: nor should it be said that

babeatur, ad aliam illnd deducant ; ita ul absolute loquendo ad valorcm auri monetati vel non monetati labor transferentium nihil pertineat. Si aurum monetatum haberet ^ua merx simul eandem mensurandi utilitatem, quae ipsi qua monetae tribuitur, eodem prorsus modo esset dicendum de moneta ac de caeteris rebus venalibus. Porro, si res unius regionis cum eadem re alterius regionis, ex. g. equus cum equo, in eodem numero commutaretur, sane haberetur in utraque regione valoris aequalitas : dummodo, ut patet, non supponatur rem in una regione abundare quae in alia deficeret. Ita etiam esset de auro; et quidem ita esset de auro quatenus monetato et •quatenus non monetato. Atqui a S. Thoma nullomodo supponitur aurum qua metallum in una regione abundare, ac in alia deficere, sed supponitur aurum qua monetatum deficere; unde exinde aequivalentiam inter aurum hujus regionis et numisma illius negare non potest, Unde tandem aequivalentiam negat inter aurum quatenus merx est seu res venalis, ac aurum quatenus est mensura rerum venalium seu numtsma (i). Ethaec explicatio loci obscurioris citati videtur admittenda, tuin ut locus in se ipse rite intelligatur, tum ut toti doctrinae de pecunia cohaereat.

the labor of foreign exchangers should be remunerated by giving a greater weight of gold than of coins; for the expenses of their industry can be compensated by the parallel expenses of the labor of those who, from a region where only gold metal is available, bring it to another; so that, absolutely speaking, the value of coined or uncoined gold does not pertain to the labor of those transferring it. If coined gold had, as a commodity, the same measuring utility that is attributed to it as money, it would be said in the same way about money as about other saleable items. Moreover, if an item from one region were exchanged in the same number with the same item from another region, e.g., a horse for a horse, there would indeed be equality of value in both regions: provided, as is clear, that it is not supposed that an item is abundant in one region and scarce in another. The same would be true of gold; and indeed, it would be true of gold whether coined or uncoined. But St. Thomas does not suppose that gold as a metal is abundant in one region and scarce in another, but supposes that coined gold is scarce; hence he cannot deny the equivalence between the gold of this region and the coin of that region. Therefore, he ultimately denies the equivalence between gold as a commodity or saleable item, and gold as a measure of saleable items or coin. This explanation of the cited obscure passage seems to be admissible, both to rightly understand the passage itself and to cohere with the entire doctrine of money.

Et quidem in eadem sententia de distinctione inter pecuniam ut mercem, et pecuniam ut pretium, nititur doctrina scolastica de valore imposilo (i) ab auctoritate publica, cui valori omnino in commutationibus standum sit cum

And indeed, the scholastic doctrine of imposed value by public authority, which must be adhered to in exchanges when dealing with money as money, relies on the same distinction between

de pecunia ut pecunia agatur : nisi enim haec doctrina supposuerit distinctionem illam, et nisi pecuniam formaliter tantum ut mensuram non mensuratam habuerit, nullatenus intelligeretur. Tandem quia pecunia simul est res quaedam venalis, « etsi liceat suum jus exigere incudendo numisma, moderatus lamen debet esse princeps quicumque vel rex sive in mutando sive in diminuendo pondus vel metallum : quia hoc cedit in detrimentum populi, cum sit rerum mensura, sicut supra dictum est : unde tantum est mutare monctam sive numisma, quantum stateram sive quodcumque pondus » (2). Quod ut rite intelligatur loco suppriori conferatur : quamvis enim de eodem detrimento in utroque agatur textu, nempe de detrimento quod populus regionis alicujus patitur ex eo quod aurum vel numisma ipsius cum numismae ex^{traneo} commutetur (3), tamen detrimento hoc diversa prorsus ratione videtur explicandum. Etenim in priori loco, ubi supponitur non proprium aurum sed proprium numisma deficere, numisma qua tale commutatur cum merce aliqua, puta argento vel auro, et quidem ut numisma qua instrumentum mensurationis obtineatur : ita autem, ut aequalitas commutationis servetur, in numismate qua tali aestimari potest tum res tum utilitas mensurandi ipsi rei auctoritate publica imposita : id est, commutatur in rem et mensura cum merce. Cum deinde in extranea regione numisma acquisitum adhibeatur, nisi a rege hujus regionis valor imponatur valori intrinseco superior, mensurabit ibi non secundum valorem quem habet in propria regione, sed secundum valorem ipsius intrinsecum : < et hoc sine detrimento esse non potest x ». E contra, alio textu supponitur in utraque regione proprium haberi numisma : si numisma utrobique modo ex natura rei requisito cudatur, ex numismatum commutatione nullibi orietur detrimentum. Sed si numisma unius regionis pondere vel metallo adulteretur, eo ipso quoad alteram regionem, ubi secundum valorem

money as a commodity and money as a price: unless this doctrine presupposed that distinction, and unless money was formally considered only as an unmeasured measure, it would not be understood at all. Finally, because money is also a saleable item, “even if it is permissible for a prince or king to demand his right by minting money, he must be moderate in changing or reducing the weight or metal: because this is detrimental to the people, since it is the measure of things, as stated above: hence, changing the coin or money is as significant as changing the scale or any weight.” To understand this correctly, refer to the previous passage: although the same detriment is discussed in both texts, namely the detriment that the people of a region suffer from exchanging their gold or money with foreign money, this detriment seems to be explained in a completely different way. Indeed, in the previous passage, where it is supposed that not proper gold but proper money is lacking, money as such is exchanged for some commodity, such as silver or gold, and indeed as money to obtain the instrument of measurement: thus, to maintain the equality of exchange, both the thing and the utility of measuring imposed by public authority can be estimated in the money as such: that is, a commodity and a measure are exchanged for a commodity. When the acquired money is then used in a foreign region, unless the king of that region imposes a value higher than the intrinsic value, it will measure there not according to the value it has in its own region, but according to its intrinsic value: “and this cannot be without detriment.” Conversely, the other text supposes that each region has its own proper money: if money is minted everywhere as required by the nature of

inlrinsecum aestimatur et permutalur, valore minuitur, et manifeste « hoc cedit in detrimentum populi ». Ex quibus locis ne inferas, negandum esse assertum juxta quod pecunia qua pecunia a S. Thoma habeatur formaliter ut mensura mensurans, quamvis non ipsa commensurata ; quippe quae de facto multoties mesurelur. Verum potius concludas, juxta Aquinatem, pecuniam non habendam esse sub formalitate mensurae nisi relate ad res venales, et quidem nisi in regione propria(i); habendam autem esse sub formalitate rei venalis relate ad aliam pecuniam, et quidem relate ad regionem extraneam (2). Et ita omnia in doctrina exposita miro modo componuntur; et insuper ita explicatur quonam sensu S. Doctor cambium intelligat. Cum autem notione cambii alter hic pecuniae respectus illustretur, et cum a modernis multis cambium allegetur lanquam contradictio doctrinae scolasticae atque exceptio ad theoriam de pecuniae sterilitate, breviter de eodem juxta mentem Angelici inquiramus.

the thing, no detriment will arise from the exchange of money. But if the money of one region is adulterated in weight or metal, it is thereby diminished in value concerning the other region, where it is estimated and exchanged according to its intrinsic value, and clearly “this is detrimental to the people.” From these passages, do not infer that the assertion that money as money is formally considered by St. Thomas as a measuring measure, although not itself measured, should be denied; rather, conclude that, according to Aquinas, money should not be considered under the formality of a measure except in relation to saleable things, and indeed only in its own region; but it should be considered under the formality of a saleable item in relation to other money, and indeed in relation to a foreign region. Thus, everything in the doctrine presented is wonderfully composed; and moreover, it explains in what sense the Angelic Doctor understands exchange. Since the notion of exchange illustrates this other respect of money, and since many moderns allege exchange as a contradiction of scholastic doctrine and an exception to the theory of the sterility of money, let us briefly inquire about it according to the mind of the Angelic Doctor.

Fundamentum esse videtur : « (pecuniam) numisraaticam solam dicit (Philosophus) esse naturalem, quia ad commutationem rerum naturalium ordinatur : quod facit proprium numisma, et non aliud, ut ex jam dictis apparet » (i). Itaque in proprio numismate erga res naturaliter utiles absolvitur ratio pecuniae. Sed, ut jam notavimus, numisma c semper non ordinabitur ad permutationes » rerum venalium. < Et hoc etiam habet veritatem in aliis speciebus pecuniarum [scilicet praeter

The foundation seems to be: “The Philosopher says that only coined money is natural, because it is ordered to the exchange of natural things: which proper money does, and not anything else, as is apparent from what has been said.” Thus, in proper money, the nature of money is fulfilled concerning naturally useful things. But, as we have already noted, money “will not always be ordered to exchanges” of saleable things. “And this also holds true for

numismaticam], imo amplius, ut in camporia, quae non proprie ordinatur ut sit mensura rerum venalium, sed magis ad permutationem numismatis » (t). Inde evidenter constat a S. Thoma cambium haberi ut contractum permutationis numismatis cum numismate, quae considerentur non ut « mensura rerum venalium », sed ut « aliquid per se », imo « quamvis sit mensura » rerum venalium. Aliis verbis, in cambio numismata ut merces habentur*, proinde secundum valorem intrinsecum permutandae : et ita vera constituitur rerum permutatio (3). Quod autem ad licitatem attinet cambii, id est permutationis monetarum qua lucrum quaeritur, praetermittendo ea quae S. Thomas Aristoteli annotat, et doctrinam hauriendo ex Summa Theologica, haec dicenda videntur : eadem prorsus statuit de commutatione quarumcumque rerum ad denarios, quando haec fit « non propter res necessarias vitae, sed propter lucrum quaerendum » (4) : et tales quidem commutationes proprie sunt negotiatio. Atqui, ut supra notavimus, negotiatio licita reddetur; sicut cum aliquis lucrum moderatum quod negotiando quaerit, ordinat ad domum suam sustentationem, vel etiam ad subveniendum indigentibus; vel etiam cum aliquis negotiationi intendit propter publicam utilitatem, ne scilicet res necessariae ad vitam patriae desint; vel lucrum expetit non quasi finem, sed quasi stipendium laboris » (i). Imo et potest hoc (carius vendere quam acceperat) licite facere... vel quia pretium rei est mutatum secundum diversitatem loci, vel temporis vel propter periculum cui se exponit, transferendo rem de loco ad locum, vel eam ferri faciendo » (2). Unde cambium, verae mercium negotiationi aequiparata, non uno ex capite licere S. Thomas declarat.

other kinds of money [besides coined money], indeed more so, as in money-changing, which is not properly ordered to be a measure of saleable things, but rather to the exchange of money." Hence, it is evident that St. Thomas considers exchange as a contract of exchanging money for money, which is considered not as "a measure of saleable things," but as "something in itself," even though "it is a measure" of saleable things. In other words, in exchange, money is considered as a commodity, and therefore exchanged according to its intrinsic value: and thus a true exchange of things is constituted. As for the lawfulness of exchange, that is, the exchange of money for profit, setting aside what St. Thomas notes on Aristotle and drawing doctrine from the "Summa Theologica," the following should be said: he states the same about the exchange of any things for money when this is done "not for the necessities of life, but for seeking profit": and such exchanges are properly trade. But, as we noted above, "trade becomes lawful; just as when someone directs the moderate profit he seeks by trading to the support of his household, or even to helping the needy; or even when someone engages in trade for the public good, so that necessary things for the life of the country are not lacking; and seeks profit not as an end, but as a reward for labor." Indeed, "he can lawfully sell for a higher price than he bought... either because the price of the thing has changed according to the difference of place or time, or because of the risk he exposes himself to by transferring the thing from place to place, or by having it transported." Hence, exchange, equated to true trade of goods, is declared lawful by St. Thomas for more than one reason.

Conclusio. — Unde tandem concludendum est, juxta sententiam S. Thomae, duplicem distingui usum pecuniae : alterum pecuniae formaliter ut pecuniae, ut instrumenti mensurationis, ut pretii, seu ut mensurae mensurantis sed non mensuratae : qui usus a posterioribus scolasticis rite vocatus est activus; et alterum usum pecuniae formaliter ut rei venalis quae cum alia re venali commutatur, adeoque eidem potest commensurari[^] imo alia pecunia, ut pretio, potest mensurari : qui usus ab eisdem convenienter dictus est passivus. Usus activus subdistinguendus est in usum principalem, quo dicta mensura in commutatione adhibetur et expenditur, et usum secundarium, quo mensura, non ad commutationes adhibita, in seipsa qua mensura relinquitur. Atqui usus pecuniae, de quo S. Thomas in quaestione de mutuo et usura agit, usus est activus-principalis ; usus vero de quo in causa cambii, usus est pecuniae passivus (i). Ex quibus patet quanta cum incuria de systemate scolastico loquantur, qui concidunt scolasticos sibi ipsos contradixisse seu coactos esse ad principium de improproductivitate pecuniae paulatim per partes derelinquendum : eosdem enim lucrum ex pecunia illicitum habere in mutuo, econtra licitum, verbi gratia, in cambio (2), Ubi nam, quaeso, invenitur contradictio, cum non idem sub eodem respectu opponatur? Sane principia de pecunia fundamentalia, id est duplex hic respectus, impugnentur, si placeat : altamen, non videtur quoniam successu. Verum si ipsa principia, ut fieri solet, intacta relinquuntur, quaenam contradictio conclamari posset? De caetero, non hoc tantum exemplo sed aliis adhuc constabit dogma Medii aevi de absoluta pecuniae imo capitalis improproductivitate, quod recentiores praetendunt, somnium esse interpretum, non autem figmentum veterum.

Conclusion. — Therefore, it must finally be concluded, according to the opinion of St. Thomas, that a twofold use of money is distinguished: one use of money formally as money, as an instrument of measurement, as a price, or as a measuring measure but not measured: this use was rightly called active by later scholastics; and another use of money formally as a saleable item that is exchanged with another saleable item, and thus can be commensurated, indeed another money, as a price, can be measured: this use was conveniently called passive by the same. The active use is subdivided into the principal use, in which the said measure is applied and expended in exchange, and the secondary use, in which the measure, not applied to exchanges, remains in itself as a measure. But the use of money, which St. Thomas deals with in the question of loans and usury, is the active-principal use; the use, however, which is dealt with in the case of exchange, is the passive use of money. From these, it is clear how carelessly those speak about the scholastic system, who conclude that the scholastics contradicted themselves or were forced to gradually abandon the principle of the unproductiveness of money: for they consider profit from money illicit in loans, but licit, for example, in exchange. Where, I ask, is the contradiction found, when the same is not opposed under the same respect? Indeed, fundamental principles about money, that is, this twofold respect, may be attacked if one wishes: however, it does not seem with what success. But if the principles themselves, as is usually the case, are left intact, what contradiction could be proclaimed? Moreover, it will be evident not only from this example but also from others that the medieval dogma of the absolute

unproductiveness of money, indeed of capital, which moderns claim, is a dream of interpreters, not a figment of the ancients.

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